United States Court of Appeals

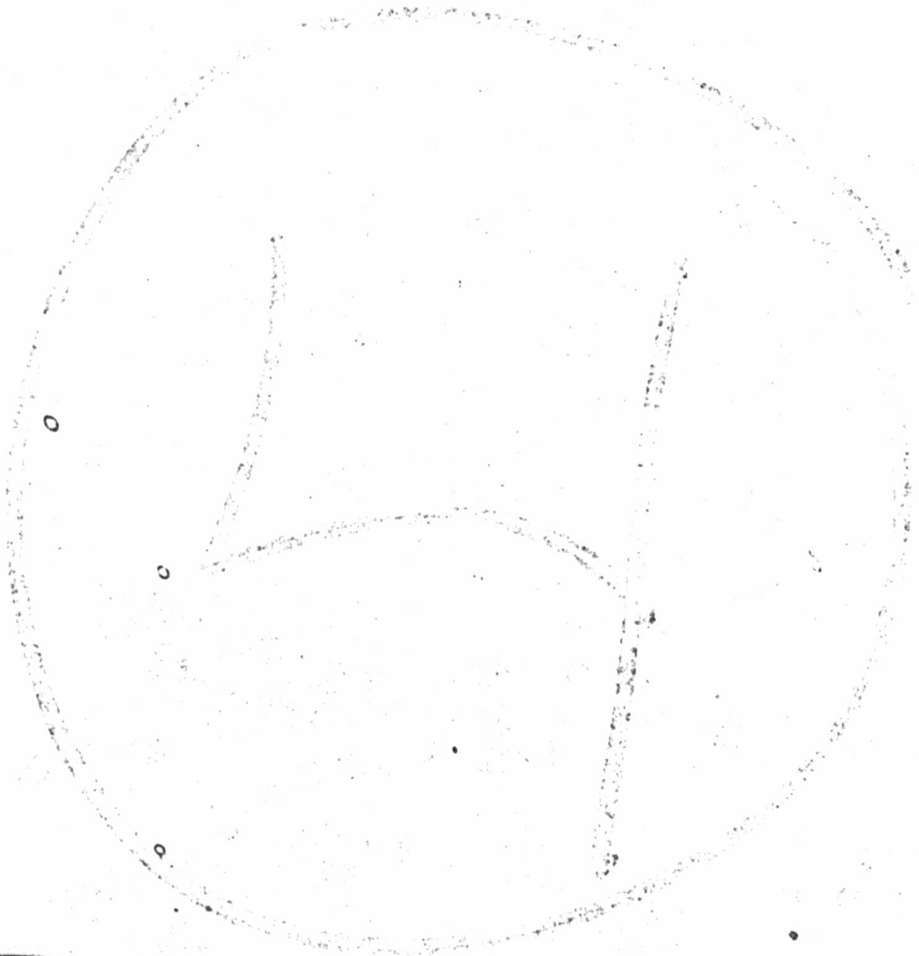
for the Second Circuit

SUPPLEMENTAL BRIEF

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74-2639



UNITED STATES COURT OF APPEALS
FILED
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A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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United States of America

vs

Philip Stoller and Martin Frank

New York, New York
September 16, 1974-11:00 am

(Trial resumed.)

(In open court, jury present.)

R A M O N N. D' O N O F R I O, resumed the stand and testified further as follows:

THE COURT: Good morning, ladies and gentlemen.

MR. GOULD: May we go ahead, your Honor?

THE COURT: You still have some more cross?

MR. GOULD: Very little, about ten or 15 minutes, I would judge.

THE COURT: All right.

CROSS EXAMINATION

BY MR. GOULD (continued):

Q Did there come a time in your activities when you were directing or managing a number of these coded or numbered accounts in these Swiss banks?

A Yes, sir.

Q I think at one point you told us the number.

Would you remind me how many you had at the peak, at the most?

A 15 to 20.

Q These were accounts, as I understand it, which you had opened for other people? You were not the owner of the accounts?

A That is correct, sir.

Q And these accounts were used by you, were they not, in what you have described to this jury as the manipulative activities?

A Not all of them, sir.

Q Some of them?

A Some of them, yes, sir.

Q When you used the accounts of these other people in your manipulative activities, they didn't know about it, the owners of the accounts didn't know about it?

A Some did not, some did.

Q How many of them knew about it?

A About two or three, I imagine.

Q Who were the ones who knew?

A Well, Mr. George Van Aiken who had the account Red Baron knew of the manipulative activities.

Q Excuse me. Van Aiken was a man who was doing the same kind of thing you were doing?

A What is that, sir?

Q Wasn't Van Aiken also engaged in the manipulations --

A Yes, sir.

Q -- with you?

A With me, yes, sir.

Q That's right.

As a matter of fact, you have been a witness in proceedings with respect to Mr. Van Aiken, have you not?

A Been a witness in proceedings respecting Mr. Van Aiken? No, I don't think so. I don't know how to answer that question.

Q Have you ever --

A I don't know if it is a yes or no.

Q Have you ever testified about Mr. Van Aiken's --

A I have testified in front of the grand jury relative to his name in the Swiss account, but I don't know if you --

Q That' is number one.

Who is the other one who knew?

A A fellow named Charles Urb, the Black Knight.

Q What is his last name?

A Urb -- sorry, not Charles Urb. I forget his last name offhand. Chuck, I forget his last name, the Black Knight.

Q You have no recollection of his name?

A I can't recall at this moment; no, sir.

Q But the rest of them didn't know that you were using their accounts for manipulation, is that correct?

A The rest of them didn't know that I was using their accounts for manipulation. Many of the rest used their accounts for their own purposes, sir.

Q Actually they didn't care --

A Chuck Peters -- I am sorry, Charles Peters. You asked me the name. I couldn't recall before.

Q Let me go back.

With respect to these other people, they gave you their money, is that correct?

A Very rarely did they give me any money.

Q Or they sent the money to Switzerland?

A They never sent money to Switzerland, to my knowledge.

Q How did the money get into the accounts?

A They didn't enter into the accounts. They were opened without money in most instances.

Q And money never came into the accounts?

A Money came into the accounts thereafter when they made money as the result of manipulations.

Q Mr.D'Onofrio, you opened accounts you say without money?

A Yes, sir.

Q In the names of other people, correct?

A For them, yes, sir.

Q And then securities were bought in these accounts?

A On full margin,yes, sir.

Q You mean 100 per cent margin accounts?

A Yes, because my manipulations always doubled the opening price on the opening day and the bank would not request funds in most instances.

Q Then they sold the securities?

A And they made money.

Q Then there was money in the account?

A Yes, sir.

Q That is the way the money came into it?

A In most instances, yes, sir.

Q From then on you managed the account as you saw fit?

A That's not true, sir.

Q You mean you always asked them for orders?

A No, sir. Sometimes I asked them for instructions, sometimes they gave me instructions, sometimes they bought the stocks that I was selling.

Q They didn't care what you did with their money, did they?

A I think they did.

Q They did care?

A Some did, yes, absolutely.

Q Did some of them not care what you did with their money?

A I don't think anybody doesn't care what you do with their money.

Q Do you remember testifying before the grand jury on July 10, 1973?

MR. GOULD: I don't have a page to give you, Mr. Sorkin, but maybe that will help you.

MR. SORKIN: Yes. Thank you.

Q Do you remember being asked this question and giving this answer:

"Q Mr.D'Onofrio, the fact that you may have opened accounts for persons at various times for Bank Hofmann does not indicate, does it, that by that fact alone they were privy to all the stock transactions in and out of their accounts?

"A In a few of the instances, they were never privy. They just didn't care what I did with their money and how it was done. Most of the instances they were privy."

Did you give that answer?

A I just gave you the same answer.

Q That is the answer you just gave me?

A Yes, sir.

Q Well now, were you asked this question and did you give this answer:

"Q The fact that the manipulation was going on and traded in their accounts they may not have known about that?

"A No, in most instances they didn't."

That is the answer you gave.

A On manipulations, yes, sir.

Q When you bought securities in those manipulated accounts that you were running for these people, did you

give them any kind of statements or writing showing what was going on?

A A month later when I would go back to the bank I would bring a statement. They would usually signed it, me covering it. I would cover it with a green sheet, and bring back to the bank their signed copy.

Q In other words, you brought them statements but you didn't let them see what was in it, is that right?

A Not if I manipulated some stocks. If I had not manipulated stock I gave them the statement and walked away.

Q I am talking about the manipulated accounts. You say you brought statements back to them and you covered it with green paper?

A I covered it with a piece of yellow paper. The statement I brought back was green.

Q Then you said to them"sign this, you can't see what's in it"?

A Only in some instances. Some instances they looked at it and in some instances they knew about it. It is a multiple question that demands a yes or no at some times.

Q I just asked you did yougive them statements?

A Yes, sir.

Q And in some instances you covered up the statement so they couldn't see what was in it?

A That's correct.

Q And they signed them anyway?

A Right,sir, and in some instances I didn't cover it. I gave it to them.

Q Do you know a man named Alan Duffy?

A Yes,sir.

Q Did he have one of the manipulated accounts?

A Yes, sir.

Q Did you give him statements?

A Yes, sir.

Q Did you cover up anything in the statements you showed him?

A No, sir.

Q When you first learned from Mr. Stoller about theBank Hofmann, do you remember that time?

A Yes, sir.

Q When was that, exactly?

A I believe it was in 1968, early, but I am not sure.

Q And you knew that he had some kind of relationship withthe Bank Hofmann, correct?

A Only because of the many phone calls he made daily back and forth to Bank Hofmann. Mr.Tover, who had securities complained about the calls to the Swiss banks, made from his brokerage firm.

Q You knew, did you not, that he had some kind of advisor, or investment advisor relationship with the Bank Hofmann?

A No, sir.

Q You never found that out?

A He never had an investment advisory relation with the Bank Hofmann. He proclaimed so, but he didn't.

Q When did you find out that he claimed that?

A He always claimed it.

Q When did you find out that that claim was false?

A I found out it was false when I was a fugitive, that he was trying to get some sort of letter. I had a letter once from Bank Hofmann saying that I was an advisory, indeed I was not, and Mr. Allen had gotten some or many, and he was trying to get a letter and the bank told me under no circumstances did they intend to give him a letter saying that he was an advisor to the Bank Hofmann for his income tax purpose in the United States, but I don't know if they ever did give him the letter thereafter or not. I am just telling you when I found out.

Q You still haven't told me when you found out?

A I said when I was a fugitive.

Q When was that?

A After August 15, 1972.

Q So, certainly after August 15, 1972, you knew that Stoller was not an advisor to the Bank Hofmann, correct?

A I knew from the bank's mouth, but I knew under my own conditions prior to that for at least a year, year and a half that he was not.

Q And from August 15, 1972 on, if Stoller said he was an advisor to theBank Hofmann you knew he was lying, correct?

A I never --he never said it to me thereafter.

Q I see. Now, you remember testifying before the grand jury -- I will withdraw that for a moment. Did he ever to your knowledge act as an advisor to the Bank Hofmann?

A Act?

Q Act as an advisor to the Bank Hofmann.

A We all acted as advisors in order to make the bank make money, but advisors in manipulative schemes, not advisors in legitimate operation. I think that is where we draw the distinction.

Q What --

A Between an advisor for criminal intent and advisor for non-criminal intent.

Q Don't you mean the distinction between what you just said and what you said in November of 1973?

A No, I don't.

Q Do you remember what you said in November 1973 on this subject?

A No.

Q Well, sir, you testified on Page EJC3, in the grand jury minutes, November 19, 1973:

"Q Am I correct, Mr.D'Onofrio, that Mr.Stoller acted occasionally as an advisor to the bank?"

And counsel conceded will concede that is the Bank Hofmann --

"Am I correct, Mr.D'Onofrio, Mr. Stoller acted occasionally as an advisor to the bank?

"A That is correct, sir."

Q Did you give that answer?

A Yes,sir.

Q That is the same answer you gave here today as you understand?

A Acting as an advisor in manipulative schemes where they make a load of money with you, but not as a true advisor, as a legal, lawful citizen.

Q Did you tell that to the Government when you -- or to the grand jury whenyou testified?

A If they would have asked me the question I would have told them.

Q So again the question was wrong, the question was incomplete?

A I didn't say that. They didn't ask the question.

MR. SORKIN: Objection.

Q He asked you, didn't he --

"Q And am I correct, Mr. D'Onofrio, that Mr. Stoller acted occasionally as an advisor to the bank?

A That is correct, sir."

Q End of answer, right?

A Yes, sir.

Q Now, do you remember meeting Mr. Ballmer for the first time?

A For tne first time?

Q Yes.

A I do not recall the first time.

Q You have no recollection?

A Well, I don't have any recollection at this point, no, sir.

Q Didn't you testify here at some time about your meeting with Mr. Ballmer for the first time, what you said to him and he said to you? Don't you remember that?

A I testified here?

Q Yes, in this case.

A I don't think I testified here in this case about my meeting with Mr. Ballmer for the first time. I don't recall.

Q Well, sir, did you know Mr. Ballmer in 1967?

A No, sir. I met him in 1968, in June, for the first time.

Q That was the first time you met him in 1968, right?

A Yes, sir.

Q But you don't remember now what conversation you had with him when you met him in 1968?

A Yes, I do but it doesn't pertain to this case.

Q It has nothing to do with this case?

A It pertains to another case.

Q Now let me ask you, sir, do you remember being asked this question, page 180:

"Q Did you have a conversation with Mr. Herbert?

A Yes, we had a meeting with Mr. Herbert, Mr. Stoller, Mr. Herbert, myself and Mr. Ballmer."

Do you remember answering that?

A I don't recall, but I must have.

Q Do you have any recollection now when you had that meeting?

A In the beginning or middle of June 1968.

Q So, we have it very clear that the meeting that you were talking about when you met with Mr. Herbert, Mr. Stoller and Mr. Ballmer was in the middle of June 1968?

MR. SORKIN: I am going to object, your Honor.

MR. GOULD: If it has to do with the content of the question I will insist it be made outside the presence of the witness.

THE COURT: Since I don't know what he is going to say -- what is your objection?

MR. SORKIN: Your Honor, I think he asked Mr. D'Onofrio when he first met him and he is proceeding along the line --

MR. GOULD: I object to this, your Honor.

THE COURT: In any event, Mr. Sorkin, I believe counsel is trying to read a question which he gave. That is permissible. Go ahead.

Q Mr. D'Onofrio, let us get something straight. You have told me that you met Mr. Ballmer for the first time in 1968?

A Yes, sir.

Q And you have also said to the best of your recollection, that meeting was in June or July of 1968?

A No. I said June.

Q June, all right. And you have also testified, have you not, that that was a meeting at which you were present with Mr. Herbert and Mr. Stoller and Mr. Ballmer?

A And Mr. Allen and Mr. Pfingst, and Mr. Bob Hollister and Mr. Bob Hollister's lawyer, and Miss Britt, his girlfriend, and many other people, was my first meeting with Mr. Ballmer but it doesn't relate to this case.

Q Did you have another meeting with Mr. Ballmer about this case?

A Many times.

Q Well, now, did you have a meeting about a week or around Thanksgiving in November of 1968?

A Yes, sir.

Q And who was present at that meeting?

A Mr. Stoller and myself and Mr. Herbert.

Q And Mr. Ballmer?

A Yes.

Q That is the one I'm trying to identify.

A You said it was my first meeting. That is how you confused me.

Q And that meeting was in the offices of the bank, was it not?

A Yes, sir.

Q And it was in that meeting that there came a discussion of the use of nominees' names, correct?

A Yes, sir.

Q Do I understand it to be your testimony that Ballmer in that meeting didn't know about the use of nominees?

A It was originally intended the bank would take the whole block and throw it into the private, secret accounts

in Switzerland, prior to that meeting.

Q Is it your testimony that in that meeting Mr. Ballmer knew what nominees were or that he didn't know?

A I think he pretty much understood what nominees were. He is a Swiss banker and their whole banking business is built on nominees.

Q You didn't have to explain to him what nominees were?

A No, I don't think so.

Q I would like t read to you from page 181. The question was to describe the meeting.

"Q Tell us please what was said and by whom and to whom?"

And then I am going to skip some material, and then part of your answer, at the bottom of the page:

"A I then had to explain to him what nominees were, just like I just explained to you."

A Yes, sir.

Q Did you say that?

A Yes, sir.

Q Did you have to explain to him and that means Ballmer there?

A Any relationship to the Securities and Exchange Commission.

Not nominees as a general word.

Q When you said to him, "I then had to explain to him what nominees were," you really meant in relation to the Securities and Exchange Commission?

A And the way we were going to evade the law on this end.

Q You didn't tell him what nominees were but he knew --

A He taught me what nominees were,Lichtenstein corporation and so forth.

Q So your answer was incomplete there, is that correct?

A Yes, I would say it was incomplete.

MR. SORKIN: Objection. Just before that, he mentions the SEC.

THE COURT: If so, you can get to that. Let's go ahead.

Q Now, sir, you have told us about a great many visits to the United States Attorney's office over the last couple of years, correct?

A No, over the last year.

Q The last year?

A Year, and three months, year and two months, five months.

hprf 7 D'Onofrio-cross

Q During the course of those meetings did you encounter Mr. Allen?

A I met him once in the hallway.

Q Only once?

A Twice, but he was with his lawyer so, I saw him once and met him once.

Q Did there ever come a time when you sat down in a corridor of the United States Attorney's office and had a conversation with Mr. Allen?

A I told you I met him once in the corridor -- did you say in the United States Attorney's office?

Q Yes, sir, in the corridor of the United States -- outside the United States Attorney's?

A That is correct, sir, yes, sir.

Q Do you remember what the subject of the conversation was?

A I could try to remember, if you let me --

Q Tell us what you remember?

A I recall --

Q Let's fix a time. When was this now?

A God, I can't recall the time, Mr. Gould. I can't recall the time.

Q But it was within the last year?

A Yes, sir, yes.

Q And now, sir, only with respect to the subject of Training With The Pros, did you talk about that?

A No.

Q Not at all?

A Absolutely not.

Q The subject was never mentioned?

A Absolutely not.

Q Did you say to Mr. Allen in that conversation in the corridor in words or substance that he had to harmonize his story with yours?

A That is an absolute lie.

Q False?

A It is a falsehood. Not your lie, the statement is a falsehood.

Q The statement?

A Yes, sir.

Q I just asked you whether you ever said anything like that?

A No, sir.

Q Did you say to him, "Listen, we have to get together on this thing "?

A No, sir.

Q Never said anything like that?

A No, sir.

Q In fact it is your testimony here today under oath that you didn't in that conversation discuss in any respect Training With The Pros?

A Sworn under the threat of perjury.

Q Everything here is sworn under the oath --

A I have more than that. If I perjure myself I'm wiped out completely. It is not just a perjury count.

Q Everything you are saying here you understand is under threat of perjury?

A I realize that. That is why I emphasize to you sworn.

Q You never had such a conversation?

A No, sir.

MR. GOULD: I have no further questions.

THE COURT: Mr. Feldshuh.

MR. GOULD: Excuse me. I just want to ask one more question.

BY MR. GOULD:

Q Have you in the course of your work for the United States Attorney's office worn a recorder for any conversations?

A Worn one?

Q Yes. I mean to tape conversations with other people.

A No, sir.

Q Never?

A No, sir.

Q Have you ever been asked to tape conversations with other people?

A No, bit I have taped conversations.

Q Since you have been working with them?

A Yes, sir, for my own benefit.

Q What did you do with the tapes?

A Most of them, they were reused in my normal course of business.

Q You mean they are not available?

A Two tapes they told me to keep and make available. I told them I have recorded a conversation and I told them I would make it available. I said they cost me $5 a piece, Philips tapes, and they said we will reimburse you the $5 and keep them and you make them available to us.

Q Did you own the machine?

A I have for six years.

Q Thank you.

MR. GOULD: That is all.

CROSS EXAMINATION

BY MR. FELDSHUH:

Q Mr. D'Onofrio, in your direct testimony you testified that you like Mr. Frank, is that right?

A Yes, sir.

Q When did you first begin to like him?

A I think I first began to like him when I realized that when I had broken laws --

Q Broken what?

A Laws, laws of this country, laws of this land --

Q When was that, sir? When did you first realize you had broken laws?

A No, I didn't finish my answer. I said when I had broken laws --

Q Mr. D'Onofrio, just one moment.

MR. SORKIN: I object, your Honor.

A You didn't let me finish.

THE COURT: Go ahead. Please, Mr. Feldshuh, we can't do it this way. We will never get anywhere.

You asked him a question. He obviously hasn't finished. He is entitled to finish.

Q Sir, I'm asking for a date if you can give us that. I would like --

THE COURT: Let him answer the question. Maybe you will get a date. Go ahead and tell us.

Q When, Mr. D'Onofrio, and please give me the date, your best recollection?

A When I began to like him is when he was useful for me personally, not the group. When I had broken laws --

Q Is that --

THE COURT: He wants a date from you, Mr. D'Onofrio?

THE WITNESS: I have to refer in my mind.

THE COURT: Think to yourself before you answer. Otherwise we are going to go on forever here.

A I would have to say in the year of 1970, late '70 or early '71, but I cannot recall the date.

Q That's when you began to like him?

A Really like him.

Q Late in '70 and early '71?

A Really like him.

Q Right.

Was there a time when you just liked him without really liking him?

A No, I always really liked him.

Q You always did really like him; is that it?

A Yes, although Mr. Gould didn't bring that out in cross, that I did really like him.

Q Is it the fact that you didn't meet Mr. Frank, according to your testimony, in 1968?

A '67, sir.

Q '67?

A Yes, sir.

Q When in '67?

A Around the summer of 1967, sir.

Q Upon that occasion did you speak with him at great length?

A Yes, sir.

Q You did?

A Yes, sir.

Q Where was that, sir?

A I spoke to him at great length at his office, your old office downstairs from your new offices that are upstairs.

Q That was at 144 East 44th Street, in New York City?

A I don't remember the address, sir.

Q What was your occasion for being there, sir?

A My occasion for being there was that Mr. Souran had sold me through a nominee 10,000 -- made me make a loan to a company known as ESR and for this $10,000 loan a private placement was going to be made with Ladenburg, Thalmann, a big member firm. I would get my loan back and I would be issued 10,000 warrants to buy stock at a reduced rate.

After I had been repaid my loan, the warrants were never forthcoming, month after month.

Finally, Mr. Souran said, "Look, call Marty Frank. he's the lawyer handling it."

I asked Mr. Hilier. He says, "Call Marty Frank."

Q So Mr. Frank was not your lawyer on that occasion, was he?

A Heck, no. Mr. Pfingst served him with a summons

on my behalf.

Q Served who on your behalf?

A Mr. Frank.

Q In 1967?

A And negotiated the settlement and Mr. Frank finally issued me the warrants.

Q So that you were in his office, Mr. Frank's office, in connection with a settlement of some matter and Mr. Pfingst instituted a lawsuit about?

A He may have threatened a lawsuit. I think he served a summons.

Q Mr. Pfingst was your lawyer upon that occasion?

A That is correct, sir.

Q And Mr. Frank was representing somebody else; is that right?

A He was an adversary.

Q You said adversary.

He was a lawyer on the other side?

A Well, he was also a director and/or an officer, but I'm not sure.

Q On that occasion he was acting as a lawyer on the other side, was he not?

A Yes, sir.

Q How much time did you spend in Mr. Frank's office?

A Very little.

Q Very little time.

So it was merely a closing with regard to an alleged settlement; is that right?

A Yes, sir. It would be considered an incidental thing to most people. At that time it meant a lot to me.

Q You didn't meet Mr. Frank at Hancock Securities, did you, sir, in December of 1967 at a Christmas party for the first time?

A No, sir. I met him again then for the first time -- for the second time.

Q For the second time?

A Yes, sir.

Q Did you have an extended conversation with him?

A I don't even recall meeting him there. If he was at the Christmas party, I met him. I did not --

Q You don't recall that at all.

In this first conversation that you talked about in the middle of 1967, nothing was said about Training With The Pros: is that right?

A 1967, no, sir.

Q Nothing at all?

A No, sir.

Q According to your recollection, after this summer

of 1967 when did you next see Mr. Frank?

A Speak or see?

Q I'm sorry --

A Speaking or see him? See him, I don't recall. Speaking with him, I have vivid recollections.

Q Do you have any recollection --

MR. GOULD: I didn't hear the answer. What kind of recollections?

A I said seeing him, I cannot recall but speaking with him, I have vivid recollections of speaking to him after your so-called Christmas party meeting that you said I met him at or I may have met him at.

Q When for the first time did you meet Mr.Frank with regard to Trawning With the Pros?

A Casually in September of 1968 when the boys mentioned we are doing this new stock.

Q When you say you met him casually, where did you meet him, sir?

A At the -- at your offices.

Q At 14 East 44th Street?

A Yes, sir.

Q And who was there, sir?

A Stoller, Allen, myself and Mr.Frank.

Q I see.

Sir, do you remember your testimony on direct with regard to what happened at that meeting?

A Do I remember my testimony?

Q Yes.

A I hate to say I do because the stenographer has been making some mistakes. I would rather --

Q Let's talk about you, Mr. D'Onofrio.

A I have a pretty good recollection.

Q Do you remember what happened at that time?

A Yes, sir.

Q Do you remember the exact words that were said?

A Not exactly, no.

Q So that with regard to the exact words that you used on direct, it may be you made a mistake as to those exact words?

A Just like the court stenographers make mistakes, I may make one.

Q Just answer yes or no, sir, please, and leave the court stenographer out of this.

Let's talk between you and me.

THE WITNESS: Ask the question.

Q The question is this: It is the fact, is it not, sir, today with regard to the exact words that you testified to on your direct examination, you may have made a mistake at that time, isn't that a fact?

A Not a mistake, no; no mistakes.

Q Now, sir, last week when you testified you do know you testified as to the exact words that Mr.Frank spoke.

A Exact, right.

Q Right?

A That I thought those were the words.

Q I see. This is a conversation, a very casual conversation. You describe it as a casual meeting. This took place in September of 1968, somewhere in that time?

A Yes, sir.

Q You are not sure of the date, are you?

A No.

Q But you are sure of the exact words Mr. Frank spoke?

A I told you I'm not sure of the exact words, substance.

Q Didn't you just tell me a minute ago that you remember the exact words in 1968? Didn't you just say that?

A Mr. Feldshuh, if I remember exact words in 1968, they ought to put me in a time capsule.

Q Then when you told his Honor and the jury with regard to what Mr. Frank said, and which appears in this transcript in quotation marks, you were just giving the substance as you recall it in 1974 in this courtroom as to what a conversation was back in 1968, almost six years ago, is that right?

A Yes, sir.

Q Right. So therefore we cannot rely upon your testimony being the exact words, isn't that so, sir? Isn't that correct? Isn't that fair?

A It is fair in most instances, but in most cases some of the words are exact.

Q I askyou, sir --

A I answered you, sir.

Q -- were the words used allegedly by Mr.Frank in

1968, September, six years ago, was that one of the instances where the words were exact, sir?

A No, sir.

Q Therefore, with regard to that testimony, it may well be that you were just giving the substance, is that right?

A The substance, to the best of my recollection.

Q With regard to the substance of what you were giving, you testified, did you not, in the course of cross-examination that you might be mistaken as to adjectives? Do you remember your testimony? You answered Mr.Gould.

A I don't think I used the word "mistaken." I said I might substitute adjectives, prefixes, suffixes or stems.

Q Or pronouns you might have substituted, is that right?

A That isn't what you asked me. You said I might have been mistaken. I would have to say no.

Q If you substituted words for what you believe you heard, then you might be mistaken, is that right?

A No, sir.

Q Not at all?

A No, sir.

Q I see. Is it possible you might have substituted "you" for "me"?

THE WITNESS: Your Honor, is that a question?

THE COURT: If you are serious about that, you are going to have to put it in context or else read the testimony that you are referring to.

This is not a line which --

MR. FELDSHUH: I will get to that, your Honor.

THE COURT: Let's do it because we are not getting anywhere.

Q Mr.D'Onofrio, do you recall your testimony with respect to Mr.Frank, being referred to as a partner of Mr. Stoller?

A I have said that often.

Q You said it often in the course of this courtroom--

A Yes,sir.

Q -- trial?

A Yes,sir.

Q With regard to partner, sir, had you ever seen a document of any kind that described Mr.Frank as the partner of Mr.Stoller?

A Document?

Q Yes.

A No, sir.

Q Never saw any such document, any letter,any piece of paper of any kind?

A No, sir.

Q With regard to Mr.Frank being described by you as a partner of Mr.Stoller or Mr.Stoller being described as a partner of Mr.Frank, did you ever hear such words out of the mouth of Mr.Stoller?

A No, sir.

Q Sir, did you ever hear those words out of the mouth of Mr.Frank?

A No, sir.

Q So when you described him as a partner, that is how you felt about him, is that right?

A That is how our little team felt about it.

Q You assumed it?

A No, I did not assume it. I knew the distribution of the fund.

Q That was your impression?

A That was my good knowledge, not impression.

Q That was your knowledge?

A Yes, sir.

Q But that knowledge didn't come to you by any statement of Mr.Stoller nor by a statement by Mr.Frank, isn't that correct, just as you have testified?

A As I testified, you will probably see he was a partner.

MR. FELDSHUH: May I have that answer?

THE WITNESS: As I --

MR. FELDSHUH: I will get it from the stenographer.

(Answer read.)

Q That is your best answer to my question, is that right?

A Is that my best answer to your question?

Q Right, sir.

A Would you please repeat the question, Mr. Stenographer?

(Question read.)

A I will have to leave it as the best answer right now.

Q Mr.D'Onofrio, do you remember your testimony with regard to a conversation you had with Mr.Stoller at the Bau au Lac Hotel in Lausanne, Switzerland,with respect to a lawyer being a partner of Mr. Stoller?

MR. GOULD: Zurich.

A Mr.Gould is correcting you. Do you want to take his correction before I answer?

MR. GOULD: It is in Zurich.

MR. FELDSHUH: I am sorry.

Q Let's talk about Zurich then.

A I just thought there could be an objection.

Q Where was the Baur au Lac Hotel?

A In Zurich,Switzerland.

Q Now, with regard to your talk with Mr.Stoller at that time, do you remember a meeting where Mr. Pfingst was present?

A Yes, sir.

Q Do you remember what Mr.Stoller said to you about Mr.Pfingst being a partner?

A Yes, sir.

End 3B

Q Wouldyou tell us what your recollection is?

A He doesn't like lawyers as partners.

Q Doesn't like lawyers as partners?

A Not as full partners, no, sir.

Q Is that what he said, not as a full partner?

A No, but later on we had other conversations he didn't reject Mr. Pfingst as a partial partner.

Q Mr.D'Onofrio, please, let's keep to the conversation to which I am addressing.

A As I testified the other day.

Q One conversation, sir.

A He doesn't like lawyers as partners, period.

Q And he didn't want Mr. Pfingst as a partner?

A No, sir.

Q Because Mr. Pfingst was a lawyer?

A He said he didn't like lawyers as a partner. Maybe he didn't like Mr. Pfingst as a lawyer also, but he didn't like lawyers as partners.

Q And he made reference on that occasion to Mr. Pfingst, isn't that so?

A In particular yes, sir.

Q And he asked Mr. Pfingst to excuse himself for a few moments when he said that?

A When he chastised me, yes, sir.

Q There was no doubt that he didn't like lawyers as a partner?

A On that date, that year, yes, sir.

Q No question?

A Yes, sir.

Q With that knowledge, sir, that Mr.Stoller didn't like anybody --

A Mr. Pfingst for a --

Q -- that included Mr. Pfingst and everybody else?

A He said lawyers. When he said lawyers, I assumed he meant any lawyer in the world, including Mr.Frank, you, Mr.Gould or anybody. As long as you are a lawyer, forget it, I don't want them as partners.

Q You had that conversationin mind, did you not, at the time you referred to Mr. -- in your testimony, and you said that your partner, making reference to Mr. Frank and Mr. Stoller, but you never theless had that conversation in mind when you testified here the other day?

A It was modified greatly thereafter in a few weeks.

Q But you haven't testified how it was modified, have you?

A No one has asked me. Would you like to ask me?

Q I just wanted to know what your testimony is with respect to Mr.Frank being a partner.

A I thought you were going to ask me so I want to reflect, speaking out loud.

Q Laying that aside for a moment, sir, you testified on your direct examination that you had some medical problems. Do you recall your testimony, sir?

A Yes, sir. You are talking about me personally?

Q Yes.

A Yes, sir.

Q And you also indicated that at the present time you are suffering from a condition with respect to the aorta, is that right?

A I have a -- I don't know if it is clogged today, but I had a clogged aorta. I spent six weeks at Duke University and took medical treatment in Zurich, Switzerland.

Q Where in Zurich?

A The University of Zurich, the medical school, when I was a fugitive.

Q When was that time?

A When I was a fugitive. In 1972, I am sorry, sir.

Q That was after August of 1972?

A I also spent time in 1971, six weeks at Duke University medical school where they discovered this.

Q How much did you weigh in 1970?

A 270 pounds, sir.

Q Say that again, sir.

A 270 pounds.

Q 270 pounds. How much do you weigh today, sir?

A About 210.

Q 210, a difference of 60 pounds?

A Yes, sir.

Q Isn't it a fact, sir, that you went to Duke University with regard to your overweight condition which had nothing to do with your heart?

A No, sir. Would you like to know what the fact is?

Q I just asked --

A No.

Q That is not the fact?

A That is not the fact, no, sir.

Q Did you ever take drugs within the last three years?

A What do you call drugs, sir, medicinal drugs?

Q You tell me what you understand drugs to be.

A There are harmful drugs that are illegal and drugs that physicians give you.

Q Did you ever take any tranquillizers?

A I take Valium, sir.

Q You take it now?

A Yes, sir.

Q Did you take one this morning?

A Yes, sir.

Q Valium is a pill?

A A tranquillizer, yes, sir.

Q What is the effect of that pill?

A You would have to ask the doctor. I am not a physician.

Q You don't know why you are taking it?

A I think it is a tranquillizer, sir, to relax me.

Q Are you relaxed now?

A Yes, sir.

Q Sir, you take Valium on a regular basis, sir, every day?

A No, sir.

Q Why are you taking it now?

A To relax me, sir.

Q In connection with your testimony here?

A In connection with my testimony, no, sir. In connection with the pressure that is brought on prior to you, by Mr. Gould, the atmosphere of the courtroom, the six lawyers on one person thinking at one time and --

Q You don't consider me being on you, do you, sir?

A No, sir, but you are working all the time back

there, looking at testimony, preparing yourself for cross, and I went to the physician a week ago last Sunday, he took me on Sunday, and I told him I was going on trial and he said well, if you feel a little bit unrelaxed, have a Valium, I will prescribe it. I didn't need it during the first three days of Milton Gould's testimony -- I mean during his cross, and when I went to the drugstore early in the morning, on last Wednesday, they were closed but I did manage to get some on Friday.

Q And you expect to take some tomorrow morning?

A I don't know. It depends upon how my blood pressure could rise or I could feel uncomfortable or I could be a little bit under stress.

End 4A

Q Do you take any other drug at the present time other than Valium?

A The doctor prescribes to me one Hydrotin, which is not a prescribed drug. You can buy it over the counter for reduction of water in one's person's system in regards to weight and I take one a week. I don't take that regularly.

Q You didn't take it today?

A No, sir. No, sir.

Q Did you take it last week?

A I didn't have it, so I couldn't have taken it.

MR. FELDSHUH: Will you mark this, please.

(Defendant Frank's Exhibit A marked for identification.)

xx

(Defendant Frank's Exhibit B marked for identification.)

xx

MR. FELDSHUH: Will you mark this one C for identification.

(Defendant Frank's Exhibit C marked for identification.)

xx

Q Sir, back in February of 1973 you were on probation, were you not?

A Yes, sir.

Q That was in connection with a conviction in the Eastern District of New York, isn't that so?

A That is correct, sir.

Q And you had occasion to show a Mr. Sheehan --

A He is my probation officer, sir.

Q And that was in connection with that particular conviction?

A When you plead guilty, is that a conviction, sir?

Q Was it in connection of that particular matter? Let's not debate --

A I don't know what you use for words and I have to be very carefuly of how I answer you, sir. Yes, sir.

Q I show you this paper, sir, Defendant's --

MR. SORKIN: May I have the cross reference on that, please?

MR. FELDSHUH: Defendant's Exhibit A for identification, 3501-X.

MR. SORKIN: Thank you.

A Are you going to show it to me, sir? Otherwise, I will put my glasses away.

Q This is a copy of your handwriting, is it not?

A Yes, sir.

Q I show you the front page of this and this is also a copy of your handwriting?

A My printing, yes, sir.

MR. GOULD: What is the number of that?

MR. FELDSHUH: 3501-X.

MR. GOULD: Thank you.

A I don't need my glasses any more? Is that what you are going to show me?

Q I will let you know when I show it to you and then you can put your glasses on.

A They are new to me. I only bought them Saturday at Grand Central Station. They were throwing documents -- when you have used them for years it is different.

Q All right, Mr. D'Onofrio, you have given me a perfect answer, I am delighted to be enlightened as to your difficulty with your eyes.

Tell me, is this your printing on the front page, page 3?

A Yes, sir, it is.

Q This printing on the page that I showed you is addressed to Mr. David Brodsky, is it not, United States Attorney?

A Yes, sir.

Q With regard to Frank's Exhibit A for identification the letter is addressed to Mr. Sheehan, isn't that right? Just look at it, sir.

A I'll keep these on then but then I can't see you.

Q You can hear me then, can't you?

A Yes, well --

Q Did you mail this letter to Mr. Sheehan in an envelope addressed to Mr. Brodsky?

A I don't recall.

Q You do know that -- you heard me say 3501-X, did you not, and you know that this was a piece of paper or these papers were given to me by the United States Attorney?

MR. SORKIN: Objection, your Honor. I don't think that is a proper question.

Q Do you know if 3501-X was given to me by Mr. Sorkin, the United States Attorney here?

A I have no knowledge of any of these documents as to what the exhibit numbers are.

THE COURT: Gentlemen, can we move ahead? It is quite correct that these were given to you by the United States Attorney, but let's move on to the point, whatever it may be.

Q Why did you send them a letter addressed to Mr. Sheehan to Mr. Brodsky?

A I didn't say I did.

Q You don't know whether you did or didn't?

A You have just got a duplicate of an envelope

hprf 5 D'Onofrio-cross

attached there. That could be your juxtaposition. Maybe you juxtaposed it, maybe someone else --

Q Maybe Mr. Sorkin did.

MR. SORKIN: Excuse me, we will concede the envelope and the letter are one package and that the letter contained in the envelope --

MR. FELDSHUH: The letter addressed to Mr. Sheehan was sent to Mr. David Brodsky?

MR. SORKIN: Yes, sir, this is the way we had it.

A If the Government got it that way --

Q Will you accept Mr. Sorkin's concession now, and I ask you, sir, why did you send this letter addressed to Mr. Sheehan to Mr. Brodsky?

A Probably I sent a letter to both at the same time, I'm assuming,and one letter went in one envelope and the wrong letter in the other one, but I don't recall. I'm saying probably.

Q Sir, do you remember when you wrote this letter?

A No, sir. You just showed it to me and --

Q It bears a date January 10, 1973.

A Yes, sir.

Q You were in Switzerland at that time, sir?

A January 10th of '73 I think I was in Italy. I'm not sure. The stamps are Italian but I think I was in Italy,

in fact.

Q Do you remember from this letter you described the state of your health upon that occasion?

A I haven't read it. I don't recall.

Q Do you remember what the state of your health was on that occasion?

A I don't recall, sir, no, sir. As of this moment I don't recall what the state of my health was then. Generally not too good.

Q Do you remember whether you were taking many drugs at that time, for the state of your health of course?

A No, sir. I was not taking any drugs. I have a cancer problem.

Q You had what, sir?

A Cancdr of my jaw, and in Zurich, they had to take my upper teeth out for --

Q Mr. D'Onofrio, we really don't need a demonstration.

A You asked me about a state of health, demonstration, sometimes, one document or one thing is worth a thousand words. If I take all my teeth out --

THE COURT: Mr. Feldshuh, I think we better take the morning recess at this point. Five minutes, ladies and gentlemen of the jury. Will counsel come to the robing room, please.

gwrf 5a am 1 D'Onofrio-cross

(Recess.)

(Discussion off the record, in the robing room.)

(In open court.)

THE COURT: All right, Mr. Feldshuh.

MR. FELDSHUH: Your Honor, with your Honor's permission I would like to offer in evidence Defendant Frank's Exhibit A, B and C.

THE COURT: Any objection from other counsel?

MR. GOULD: No objection.

MR. SORKIN: No objection.

THE COURT: All right, they will be received, whatever they may be.

(Defendant Frank's Exhibits A, B and C received in evidence.)

xx

MR. FELDSHUH: With your Honor's permission, I would like to read this to the jury.

(Mr. Feldshuh read from Defendant Frank's Exhibit A in evidence to the jury.)

(Mr. Feldshuh read from Defendant Frank's Exhibit B in evidence to the jury.

(Mr. Feldshuh read from Defendant Frank's Exhibit C in evidence to the jury.)

Q Mr. D'onofrio, with respect to your earning money to pay your medicine bills, were you doing that work

in Switzerland?

A Yes, sir.

Q You were in Switzerland from August '72 until May of 1973?

A No, sir.

Q Excuse me, you are right. You were in Switzerland until you went to England sometime in March of 1973.

A That is correct, sir.

Q Is that right?

A That is correct, sir. I was in Switzerland, domiciled, but I was in and out of many countries.

Q During that period of time you were working on many deals, weren't you?

A Many, no, sir. Yes, I would say quite a few.

Q Many deals of the same nature that you had previously worked upon?

A No, sir, new types.

Q I'm sorry, sir?

A No, sir.

Q Did they involve securities?

A One involved securities but it was not a manipulation.

Q It was not --

A Not a manipulation by me.

Q I see.

How about the others, did they --

A The others were mostly real estate and I did some work for the Vatican.

Q For the Vatican?

A Yes, sir.

Q What connection did you do any work for the Vatican?

A I was trying to trade some funds that Warner Brothers Motion Picture Company owns in India that were blocked currencies for many years and I was trying to arrange with Warner Brothers or Warner Communications to trade off their blocked currencies in India to the Roman Catholic Church so that they could donate the funds to the poor and needy and feed them.

I did that in India and I worked on it in Brazil and I forget the country. They have all the famine and the fighting, Nigeria.

Q Did you write anything, did you prepare any documents with respect to that?

A I don't recall if I did. They are all back in Mr. Herbert's office. There are many documents, but they are left back there and he has possession of them.

Q Is it a fair statement to say that you did not except for one instance engage in any venture that involved

securities?

A That is correct, sir.

Q What was that incident?

A That was an instance called Franzhubingerag.

Q In what respect did that involve securities?

A It involved a statutory merger of some type, a tax-free merger of a shell corporation into a company in Austria, in Germany, a foreign corporation.

Q You were thoroughly versed in mergers and reorganizations, were you not, by that time?

A Yes, I would say so, sir.

Q Sir, you were also, as I recall your testimony, the director of underwriting at A. T. Brodbach in 1968?

A Yes, sir.

Q And in that connection, in connection with that work, you were also very well versed as to mergers, reorganizations and the manner in which they should be handled from the point of view of securities?

A No, sir. I was versed in the wheeling and dealing and negotiating, but in the legal contents of merger, reorganizations which is tax-free, that which can be done legally, that which the stock can take place, lawyers take care of that. I do not take care of that.

Q You didn't take care of that at all?

A No, sir.

Q Back in '72, further down in the road in '72, did you do any part of the legal work in connection with the merger?

A No, sir.

Q In other words, you did about the same thing, didn't you?

A I did everything but legal and accounting.

Q That is the same thing you did back in '68, everything but the legal and accounting?

A Yes, sir.

Q You created the concepts of the deal, did you not?

A That is correct, sir.

Q In January of 1973 you had fled from the United States, hadn't you?

A No, sir. You mean I had fled that month or I was still fleeing?

Q You were still fleeing.

A I was still fleeing.

Q While you were still fleeing from the United States, did you tell the Vatican that you were still fleeing?

A Yes, sir. I tried to get them to get me a passport under an arrangement with the Italian Government and I had succeeded in depositing enough funds not to be considered a vagrant in the Bank D'Roma in Italy, and the Italian Government was considering giving me a passport and what you call freedom from extradition from the United States, because they don't recognize our security laws.

Q Did you tell anyone in the Vatican why you were fleeing?

A I told them I violated security laws.

Q Whom did you tell?

A One of the Cardinals and one of the heads of the Secret Service that I worked with.

Q Heads --

A One of the Cardinals and one of the heads of the Secret Service.

Q Of the United States?

A Vatican. They have their own secret service.

Q On how many occasions were you in the Vatican?

A Oh, eight, nine or ten.

Q How many times prior to January 1973?

A Prior to January 1973?

Q Yes.

A Twice as a visitor, three times as a visitor.

Q Visitor?

A To look at the art work and the Papal rooms as a visitor, as a tourist.

Q You went into the various chapels and looked at the statues and so on in theVatican?

A Yes, just like I would go --

Q Just like any tourist would do?

A Like down in the Curacao, the oldest synagogue --

Q Let's stick with the Vatican. In those cases prior to January 1973 you didn't discuss any business ventures with any representative of the Vatican?

A No, sir.

Q But you did talk with a Cardinal, is that right?

A Yes. I think he was Secretary of State of the Vatican.

Q What was his name?

A I can't recall it, sir.

Q Do I understand you,sir, that in 1973 you had occasion to go to the Vatican and talk withthe Cardinal and discuss the venture that you have described to this jury and you don't remember the Cardinal's name?

A No,sir. I can't recall it at this time. I cannot

recall it. It is a very complicated name, Monsignor Montani, but I am not sure.

MR. SORKIN: I didn't hear that name.

THE WITNESS: Cardinal Monsignor Montani, but I am not sure.

Q Mr.D'Onofrio, before you visited with the Cardinal you requested an appointment, didn't you?

A The people that represented me requested the appointment.

Q Who were the people who represented you, sir?

A Company called IFE.

Q What does that stand for?

A Instituto Finanzeria Econonecria.

Q What language is that?

A In Italian.

Q You understand Italian?

A I can't speak it, I can barely understand it and I can read it a little.

Q Could you give us your best translation of what you just said?

A It means that it is an institute of finance. It is like a financial representative or a financial consultant.

Q You employed these financial consultants and these financial representatives?

A They employed me.

Q So you were acting for them and they made the appointment?

A Yes, sir.

Q Who was the "they"?

A At that time?

Q Yes.

A Fellow named Albert Marucchhi.

Q When you were with Alberto Marucchhi, did you tell him at that time that you had fled from the United States?

A Yes, sir.

Q You told him you were a fugitive?

A Yes, sir.

Q Do I understand you, sir,that he then employed you to represent this fund, is that right?

A Yes, because they don't recognize the Securities and Exchange laws of this country.

Q Did you tell him about perjury?

A I don't remember telling about perjury or not.

Q Did you tell him about any of your other indictments?

A I don't recall -- I told him everything I knew about at the time.

Q In 1972?

A I had a couple of --

MR. SORKIN: '73.

THE WITNESS: '73. You are talking about '73.

Q Let's --

A I had only read them in a newspaper. I didn't know what the indictments were.

Q Did you tell him you had read them in a newspaper and you were going to represent him in the Vatican and this was your background?

A Yes, sir.

Q You told him all of that?

A Absolutely.

Q This gentleman, Mr. Marucchhi, did he accompany you when you went to the Vatican?

A Yes, on all occasions because he was my translator.

Q I see. When you sat down with His Eminence, the Cardinal -- you don't remember the Cardinal's name?

A I sat with many of them. I think it was Montani, something to that nature. I don't remember the lead name.

Q You -- withdrawn.

MR. SORKIN: I object, your Honor. I probably should have objected earlier. I am objecting to this entire line. I think we have gone far afield from Training With the Pros.

End 5B

THE COURT: In any case, we are going on to something else perhaps anyhow. What is your next question?

Q Sir, you testified that you had seen many Cardinals, is that right?

A Yes, sir.

Q And whenyou say you saw them, you met with them and spoke with them?

A Well, I didn't speak. I was not capable of understanding Italian.

Q Did somebody speak there?

A The interpreter, Mr. Marucchhi would speak to them and translate to me.

Q You would say something to the interpreter?

A Yes, sir.

Q And he would thereupon say something in Italian?

A Yes, sir.

Q Your impression was, was it not, he was translating exactly what you said?

A That would be my impression, yes, sir.

Q In the course of those occasions, did the fact of your indictments come up?

A Did the fact that I was a fugitive,come up,from the United States, yes, sir.

Q Did you say to this gentleman, "Tell the Cardinal I am a fugitive," in words or substance?

A I told him to try to get me a passport too,

because they are allowed to issue passports.

THE COURT: This is the third time we have covered this and we keep covering it.

Q The passport that you used,wasn't that Robert D'Onofrio's?

A Yes, sir.

Q You still had that passport?

A Yes, sir, but I wanted an Italian passport.

Q From the Italian Government?

A Yes, sir, and I wanted one from Zambia which I also worked on and was getting, and one from Salonica and Ceylon and --

Q Just a minute. You are not an Italian citizen, are you?

A No, sir.

Q American citizen?

A Yes, sir.

Q And you want to travel under an Italian passport, and you asked the Vatican to get that Italian passport?

A I asked Marucchhi to ask the Vatican to get it for me.

Q In effect Mr. Marucchhi was merely transmitting your request?

A Yes, sir.

Q To travel under an Italian passport?

A Yes, sir.

Q Did you mention to His Eminence, the Cardinal, that you were then under indictment for perjury?

A I told you I told this to Marucchhi when I informed him of my needs and reasons for a passport that I was a fugitive from the United States, and they wanted to know were they crimes recognized in Italy, and I said to the best of my knowledge I will hire an Advocato Baker & McKenzie in Rome, and if they are crimes in Itali he said we can't help you and if they are not, we can possibly help you.

Q You testified a moment ago, Mr.D'Onofrio, the crimes to which you referred and which you disclosed upon that occasion were crimes involving the Securities and Exchange Commission?

A Yes, sir.

Q Do you remember so testifying?

A Including the perjury crime.

Q With regard to the crime of perjury --

A That was the Securities and Exchange Commission.

Q Had you understood perjury was a different kind of crime from the violation of the Securities and Exchange statutes? You know that, don't you?

A In England they recognize it. In a lot of other countries they do not.

Q Ordinary lying and false swearing, you didn't understand that would be recognized a crime in Italy?

A I understood in many countries it would not be recognized as a crime, because the Commission doesn't exist in those countries.

Q Just a minute, sir. Coming back to your request to your translator, did you tell the Cardinal about your involvement in crimes?

A No, for the reason I need a passport, sir.

MR. SORKIN: I object, your Honor. I thought we were going into a new area.

THE COURT: I suggested as much because as I say, Mr.Feldshuh, we have covered this three times.

MR. FELDSHUH: Just one more question, your Honor.

THE COURT: All right.

Q What, if anything, did the Cardinal respond to your request?

A He said to my interpreter, that we would look into it.

Q And that was it?

A Period.

Q But you never did get an Italian passport?

A No, sir.

Q Under your name or Robert's name or anybody's name?

A No, sir.

Q Mr. D'Onofrio, you wrote in Defendant Frank's Exhibit B, in evidence, dated February 10, 1973, "I am rehabilitating to a law-abiding citizen."

A Yes, sir.

Q Do you remember so writing?

A Yes, sir.

Q Now, sir, was part of your rehabilitation speaking with the Cardinal and disclosing to the Cardinal through an interpreter that you had committed crimes as to which you were fleeing from the United States? Is that part of the rehabilitation?

A Yes, sir.

Q Did you tell in words and substance to the Cardinal that you wish to be rehabilitated and want to confess to these crimes?

A No, sir.

Q I beg y our pardon?

A No, sir.

Q You never said that?

A No, sir.

Q But it was part of your intention at that time, as you wrote to Mr. Sheehan with respect --

A That had nothing to do with the Cardinal, sir.

Q That had nothing to do with it?

A No, sir.

Q But you were trying to rehabilitate yourself at that time, were you not?

THE COURT: Sustained. We have covered that. Next question.

Q Was one of the ventures that you were involved in during this period the Amitalia? Do you remember you mentioned that name?

A Amitalia Fund, one of the ventures during what period, sir?

Q During the period from August 1972 to January or February 1973.

A No, sir.

Q Were you involved in such a venture prior to that time?

A Yes, sir.

Q Would you fix the time when you were involved in such a venture?

A Oh, God, maybe 1970 and '71.

Q '70 and '71?

A Maybe '72 it was sold, early '72, but I don't remember when.

Q Early '72?

A I said I do not recall when it was sold. Mr. Herbert sold it. I don't recall the date. But, in '72.

Q Let me understand --

A '70, '71 and '72.

Q Those three years?

A About that, yes, sir.

Q With regard to that situation what kind of venture was Amitalia?

A It was an offshore fund,.

Q What is an offshore fund?

A It is a fund in which non U. S. citizens invest their money in, and the fund management could reinvest it in securities prescribed by the law of that country.

Q Did I understand you to say non U. S. citizens?

A Non U. S. citizens, yes, sir.

Q Do I understand you, sir, you tell his Honor and the jury that a U. S. citizen cannot invest in this fund?

A No, sir. They are not supposed to. There is no way -- sometimes it happens through nominee corporations.

Q But with regard to Amitalia that was an offshore

fund?

A Yes, sir.

Q And did you create Amitalia?

A Did I myself, no, sir.

Q Did you create it with anybody?

A It was created by a Dr. Ernest Tottosy.

Q How did you get involved?

A Dr. Totossy had just been expelled from Hungary. He was a Judge in Hungary and having been against the pjlitical system, he and many attorneys and Judges were expelled and he lived in Brussels, Belgium.

Q And you met him?

A Yes, through friends of friends, yes, sir.

Q Did he agree to employ you as a representative of the Amitalia Fund?

A No, sir.

Q He didn't?

A No, sir.

Q Will you tell me what was your connection with the Amitalia fund?

A That is a better question.

Q Thank you very much.

A That is a better question.

Q Thank you.

A He asked me if I could put some funds in it, he would use his sales force that is presently selling in Italy, and that we could get it approved legally bythe Italian Government just like a SEC fund, and Italians would be able to invest their money and half of it would be invested in Italy and half of it would be invested in U.S. securities.

Q What did you do, if anything, in connection with this effort?

A I talked to Mr. Herbert and we invested about $65,000 in the formation of the fund. They invested at their group in Brussels about $35,000, for literature, lawyers in Italy, lawyers in Brussel, Luxemburg corporation and most of it went for legal fees.

Q So you had 35,000 and 65,000, is that right, sir?

A Thirty-five thousand from the one group and $65,000 from the --

Q That made $100,000?

A Yes, sir.

Q What other assets did Amitalia have at that time?

A That is the management company.

MR. SORKIN: Your Honor, I must object. I think again we are going off into an area that has nothing to do with this.

THE COURT: I agree, at least as to this particular

area it is unnecessary. Let's not go into details which is of no comfort whatsoever to your client 's position.

MR. FELDSHUH: I will ask the clerk to please mark this as Exhibit D for identification.

xxx (Defendant Frank Exhibit D was marked for identification.)

MR. FELDSHUH: Would you mark this as E.

xxx (Defendant Frank Exhibit E was marked for identification.)

MR. FELDSHUH: Will you mark this, please.

xxx (Defendant Frank Exhibit F was marked for identification.)

MR. SORKIN: Are there any cross references on these, Mr.Feldshuh?

MR. FELDSHUH: No.

Q I show you Defendant Frank Exhibit D for identification, and I ask you, sir, is this your printing?

A Yes, sir.

Q On or about May 12, 1970, did you have occasion to write to any representative ofthe Vatican?

A I have no knowledge. I have no recollection.

Q I show you Defendant Frank Exhibit D, where your printing on the top of it and I ask you didn't you write that letter, the original of that letter to the representative

of the Vatican?

A Yes, United States, yes, sir.

Q You did that?

A Yes, sir.

MR. FELDSHUH: I will offer it.

MR. SORKIN: May I look at it first, your Honor?

MR. FELDSHUH: I will give you a copy of it. Does your Honor want to see a copy of it at this time?

THE COURT: If you have a spare.

MR. FELDSHUH: I have made spares, your Honor.

THE COURT: Thank you very much. Any objection to this?

MR. SORKIN: Just a moment, your Honor.

Your Honor, my objection is, I fail to see the relevancy of this but other than that I have no objection.

MR. GOULD: Does your Honor want to hear anything on this subject?

THE COURT: No. Do you wish to object?

MR. GOULD: No, sir, I have no objection.

MR. SORKIN: Your Honor, I will withdraw the relevancy. No objection.

MR. FELDSHUH: Would you mark it, please.

(Defendant Frank Exhibit D was received in evidence.)

xxx

MR. FELDSHUH: With your Honor's permission I would like to read this letter to the jury.

(Mr.Feldshuh read Exhibit D in evidence to the jury.)

Q On November 12, 1970, you as you testified in response to Mr. Gould's questions, you had been involved in many manipulations during that year?

A Yes, sir.

Q On November 12th, 1970 -- on May 12, 1970, you hadn't started your rehabilitation program as you testified to this jury, is that correct?

A That is about the time I started to think I better be good.

Q November 12, 1970 is the new date --

A Just thinking I better start getting some good things in life because the SEC will soon be upon me.

Q What else did you do in 1970, after May 12, 1970, with respect to manipulations and securities?

A I think all these indictments that were quoted at the beginning of this trial.

Q They weren't brought down by May 12, 1970.

A No, but the acts were committed on most of them.

Q Did you get a response to this notice?

MR. GOULD: May we get thelast question and answer read, your Honor?

(Record read.)

A No.

Q Mr. D'Onofrio, you do remember your testimony,

do you not, with respect to when you were arrested in England in March of 1973, and after spending 55 days in jail there, you decided to rehabilitate yourself. Do you remember that?

A No. I decided to come back to the United States, of course as to rehabilitation --

Q It was after that, sitting in jail 55 days, you began to rehabilitate yourself?

A I thought many times during the course of the year when does one turn from the bad side of life and become good. Many times I tried. Many times the devil tempted me and I went the other way but many times I pondered. When my wife divorced me when I was a criminal, she told me, I said rather than lose my wife I should become a good guy. I tried but I couldn't. I didn't have the strength or the capabilities to get out of this web.

Q Out of this web.

Wasn't this letter now, Defendant Frank's Exhibit D in evidence, wasn't that part of the web?

A Part of the web?

Q Yes, sir; where you had only $100,000 in the bank and spending so much money for attorneys' fees.

A I don't even understand your question.

Q You just used the word "web" did you not?

A Web of crime.

Q I am agreeing with you and I am asking you, sir --

A What is the question?

Q The question is: On May 12, 1970, when you wrote this letter to the Monsignor with regard to Amitalia Fund, wasn't that part of the web of crime at that time?

A All part of my web of crime, yes, sir.

Q Now, sir, it is a fair statement, is it not, sir, that on May 12, 1970, you wrote that letter to con the Vatican into giving you some money in one of your ventures?

A No, sir.

Q Isn't that the fact?

A No, sir.

Q It is not the fact?

A No, sir.

Q Despite your testimony --

A You used the word "con" and "fair". I have to say no. If you want to use different language, I may say yes.

Q Let's see if we can get together on this, sir.

A Let's try.

Q All right, let's try. You wrote this letter on May 12, 1970?

A Yes, sir.

Q You at that time were engaged in a web of crime, as you have testified?

A Yes, sir.

Q Now, sir, you have testified a moment ago that this letter was written as part of the web, right, sir?

A No, I didn't.

Q Don't you recall your testimony just two seconds ago?

A No, not as part of the web. It was in fact that while the letter was written I was in a web of crime, but not as part of the web, as part of a conspiracy.

Q When you made reference in Exhibit D: with regard to enclosures, did you describe in those enclosures that there were 65,000 contributed and 35,000 was contributed by the other people, a total of $100,000, that was mostly used for attorneys' fees?

A Sir, I don't think you know anything about funds otherwise your questions are totally irrelevant and bad. If you want an education I'll give you one but it will take two hours.

Q And you knew a lot of funds on May 12, 1970?

A But you know nothing about them in your question.

Q But certainly on May 12, 1970 you knew a lot about funds?

A Not a lot but considerably more than you do.

Q A lot more than I know today for sure.

A Yes, sir.

Q Mr. D'Onofrio, on or about October 28, 1970, you were engaged in the business of D'Onofrio, Kirschbaum & Company, Inc., New York City?

A Yes, sir.

Q You were in touch with Mr. Herbert during that period of time?

A All the time.

Q I show you Defendant's Exhibit F for identification. I ask you, sir, is that a copy of a letter you wrote to Mr. Herbert concerning the Amitalia Fund?

A I have no idea and I have no way of knowing.

Q Read it, would you please, read it again?

A Even by reading it, it wouldn't be able to make me answer.

Q Read it, please.

A You want me to read the letter?

Q To yourself and then tell me whether you have any recollection of writing that letter to Mr. Herbert.

A I don't recall writing this but it doesn't mean I didn't. I do not recall I wrote it.

Q The fact that it made reference to the Amitalia

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Fund --

MR. SORKIN: Your Honor, objection. He said he doesn't recall writing it.

THE COURT: Yes, next question.

Q Sir, if I told you that it makes a reference --

MR. SORKIN: Your Honor, I press my objection.

THE COURT: I have just sustained that objection, Mr. Feldshuh. Whatever it says, he has read it, so let's not repeat it. If you want to offer it, you may.

Q Sir, with regard to the code name, Pompeii,you testified that was a name used by Mr. Weissinger, is that correct, sir?

A To my best recollection, yes, sir.

Q You don't have to have a recollection as to that, do you? You know that.

A I have to have a recollection.

Q And you knew that to be the fact back in 1970?

A I don't know if I knew it then in 1970. I heard the name but you are telling me to who does he belong. I don't know.

Q Back in 1970, on or about May 23rd, you were engaged in the business, were you not, of D'Onofrio, Feeney, Kirschbaum & Company, Inc., is that right?

A That is probably correct, sir.

Q At 136 East 57th Street, New York, New York; wasn't that the address at that time?

A Yes, sir.

Q At that time you were in touch with Mr. Herbert?

A Many times.

Q In connection with your contacts with Mr. Herbert, did you write or speak with him concerning the Amitalia Fund?

A Many times.

Q What was Mr. Herbert's connection with the Amitalia Fund?

A He was a director, I believe. I'm not sure. I don't know if he was a director of the fund or the management company.

Q What was your connection at that particular time?

A Officer and director of both the fund and the management company.

Q You were?

A Yes, sir.

Q What officership did you hold?

A I don't recall.

MR.SORKIN: Your Honor, I must object. We are going into the Amitalia Fund and I thought we dropped that a half an hour ago.

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THE COURT: The details I thought we did too. It's very interesting but he has admitted essentially what it was and why we go back to the clinical details, I just don't understand from your point of view.

Q Do you know if the management at Pompeii had anything to do with the Amitalia Fund?

A I don't know, I don't think so. No, I wouldn't know.

Q Let me show you Defendant Frank's Exhibit E, for identification, and I ask you to look at it and tell us whether or not first you have a recollection of writing that letter to Mr. Herbert.

A I don't recall writing it, no, sir.

Q Will you look at the second page, sir.

A What should I look at here, sir?

Q Just read it to yourself and tell me if it refreshes your recollection.

A Do you want me to take the Court's time and read it in its entirety?

Q I'm sure the Court will be patient.

THE COURT: Yes. I can give you the whole luncheon recess.

THE WITNESS: With this letter?

THE COURT: Yes, and then you can tell us after

lunch whatever Mr. Feldshuh wants to know. We will resume at 2:15, ladies and gentlemen.

MR. GOULD: What time does your Honor intend to recess this afternoon?

THE COURT: 4:00 o'clock on the assumption everybody can get hom in time who needs to get home. I hope that is all right.

MR. SORKIN: That is all right, your Honor.

(Luncheon recess 1:00 p.m.)

gwrf pm 1a

AFTERNOON SESSION

2:15 p.m.

(In open court, jury present.)

R A M O N N. D ' O N O F R I O,

resumed the stand and testified further as follows:

CROSS EXAMINATION

BY MR. FELDSHUH:

Q Mr. D'Onofrio, what was your educational background prior to 1968? You went to Maryknolls --

A I went to the Seminary for the Foreign Missionary Order. There I -- being the Seminary doesn't have classes of education --

Q Keep your voice up.

A I guess it would be high school. I went to Venard College, which is also part of the Seminary in Clark Summit, in Pennsylvania. After Blessed Theophane, Venard and continued my missionary studies.

Then I went to the Marine Corps. I didn't have what you would call a high school diploma because the Seminaries were not qualified to issue a diploma as you were studying theology.

Q Do I understand that Venard was not a college?

A It was a college, yes, sir.

Q But you said college.

A Yes, sir. When I got out of the Marine Corps I took the entrance exams for Columbia University. I nonmatriculated for about half a year to a year,about a year, I guess. In furtherance of my education I took some courses in Queens College in the evening, like three nights a week for about a year and a half in business administration and industrial psychology.

Q What year was that, sir?

A Maybe 1950.

Then in 1950 I took a home study law course from Blackstone School of Law, nonresident, for about five years.

Q Is that a correspondence course?

A Home study. That is correct, sir, for about five or six years, I don't remember, in which you mail your answers back and forth and then go out at the end of your exam.

Other than that, as far as formal education, conducting seminars for the American Management Association in the field of management. I have no level of education beyond that. I have no degree other than the law degree from the Blackstone and I have not matriculated to have any degree. I guess you would have to say I'm sort of a half educated man.

Q Half what?

A Half educated man.

Q I see.

When you got finished with the Blackstone correspondence course over a period of five years, was that Blackstone Law School?

A Blackstone School of Law in Chicago.

Q Was that connected with any LaSalle correspondence course, if you know?

A I don't think so, no, sir, nor do I think it is today.

Q After you got finished with that, were you a lawyer?

A No, sir.

Q Did you get any kind of degree?

A I had a Bachelor of Law degree.

Q From Blackstone?

A From Blackstone, yes, sir.

Q Did you take an examination --

A Yes, sir.

Q -- in order to do that?

A Yes, sir.

Q How long were you at Venard College?

THE COURT: Mr. D'Onofrio wants to know what to do with this letter that we left off before.

MR. FELDSHUH: He can hold it.

A About two months, sir.

Q Two months?

A Two or three months, yes, sir. I joined the Marine Corps out of there.

Q To what grade did you go in the Maryknoll --

A The fact that I entered Columbia University, took the entrance exam and passed well, they assumed I at least graduated high school and was of college requirement.

Q Did you apply to Columbia College as distinguished from Columbia University?

A I thought it was Columbia University, but you could be right it could be Columbia College.

Q I see.

A My GI Bill, I remember it as Columbia University.

Q How old were you then, Mr. D'Onofrio?

A I guess I was 20 or 21.

Q How long did you go to Columbia University?

A One full semester and part of another, almost a year.

Q That would be how many months?

A Almost a year.

Q Almost a year?

A Yes.

Q Then you dropped out of Columbia University, is that right?

A Yes, sir.

Q When you left the courtroom just at the luncheon recess, you made a comment to me about a file of yours, didn't you?

A Yes, sir.

Q What did you say?

A I said, "Mr.Feldshuh, you forgot your file over here, the files that you had gotten from my office."

Q Say that a little bit --

A "The files that you had gotten from my office."

Q Did you identify on my table a file from your office?

A Yes, sir, what I thought to be a file from my office.

Q Did you identify that file as the Amitalia file?

A No, sir, I didn't even look at it.

Q How did you know it was from your office?

A I knew my folder, my folder, the type of folders I used. I assumed it, you know.

Q You assumed it, but you did make that comment, did you?

A I assumed you got all these letters from those files.

Q I show you this cardboard file, the letter size file, and I ask you, sir, is this the one you identified as the file coming from your office?

A Yes, sir, but now I am wrong. It is not from my office. It has been recast.

Q Recast?

A Yes. I thought it was one from my office.

Q I see.

A I had the longer ones.

Q You did keep papers in the usual and regular course of your business with respect to Amitalia?

A Yes, sir.

Q Now looking at a copyof the exhibit -- referring to, your Honor,Exhibit E for identification --

A Is that this one, sir?

Q That's right, sir. And having looked at the cover,

does that refresh your recollection as to the fact that this paper came from your file?

A No, sir.

Q -- with regard to Amitalia?

A No, sir.

Q Not at all?

A You asked two questions. I said no, sir.

Q I am sorry.

A I said no, sir.

Q It does not?

A No, sir.

Q You read through this copy very carefully, haven't you?

A As you instructed me and the Judge permitted me to do during lunchtime.

MR. FELDSHUH: Will you mark this as the next exhibit, Frank for identification.

xxx (Defendant Frank Exhibit G was marked for identification.)

Q I ask you, sir, whether this is a copy of your signature?

A I am not sure, sir. I am not trying to be devious. I am trying to be candid, your Honor. I am not sure. It doesn't look like it.

Q It doesn't look like your signature?

A It doesn't look it.

Q In what respect doesn't it look like your signature?

A I don't know how. It doesn't look like mine.

Q Look at the paper and see whether or not you sent this paper together with the enclosure to someone on or about May 3, 1970?

A You want me to read it?

Q Not the whole thing, just read the letter. Read it to yourself.

A I have read it, sir. What do you want me to answer you?

Q Does this refresh your recollection as to whether or not you sent the original of this letter on or about May 3, 1970 to a Mr. G.G. Chaplin at Via Maraini 17 Lugano, Switzerland?

A No, sir.

Q Would you look at the papers attached to it and see if it does?

A What am I to look at it?

Q Look right at the top there, at the first page. Don't go beyond the first page. Does that refresh your

recollection?

A No, sir.

Q Do you know what this document is that is attached to the paper?

A Generically, sir?

Q Generically what it is?

A It is a list of directors.

Q It is a list of directors. Is that all it is generically, a list of directors?

A Yes, sir. Of the Amitalia Fund.

MR. SORKIN: I object.

MR. GOULD: May I make a suggestion to Mr. Feldshuh that may save time? Would you bear with me a moment?

(Pause.)

End 1B

MR. FELDSHUH: Your Honor, may we go to the side bar.

THE COURT: I don't see why we need to go to the side bar.

MR. FELDSHUH: I show you this paper, Mr.Sorkin, and I ask you looking at the signature appearing at the bottom there, will you concede for purposes of this trial that this is a copy of Mr. D'Onofrio's signature?

MR. SORKIN: Your Honor, I will not concede. I don't know whose signatur ethis is. Mr.Feldshuh has enough of Mr. D'Onofrio's signatures --

THE COURT: Any further comments from you will only exacerbate the situation. You don't have to concede anything.

What next?

MR. FELDSHUH: Yes, your Honor.

Q Was there ever an occasion, Mr.D'Onofrio, where you submitted your biographical sketch of your education to any person?

A Yes, sir, on many occasions.

Q To whom was it? Just give me one.

A I can't recall. So many of them went out.

Q Do you know if that biographical sketch was included in the material of Amitalia Fund that you cir-

culated?

A Yes, sir.

Q Was that part of the material that went to the Vatican, as far as you know?

Q Yes, I said to the Vatican, as far as I know.

A You are talking about the Vatican in Rome or the VAtican's representative in Washington?

Q To whom did you furnish this material?

A I don't recall furnishing it to anyone but the European sources.

Q That is your testimony today, is that right?

A No, you read a letter earlier that said I supplied them with a list of directors, but I don't know if I supplied them with resumes and whatnot, or biographical sketches, as you call them.

Q You do remember, do you not, that in a letter to the Monsignor, that you did enclose certain material, did you not, with regard to your qualifications and that of the other members of the board of directors of Amitalia Fund?

A Do I remember enclosing it? No, sir.

MR. SORKIN: Your Honor, objection.

Q Look at Defendant Frank Exhibit D, in evidence, and I address you to the second paragraph thereafter. Looking at the second sentence, "Enclosed you will find the resume--"

MR. SORKIN: I would like to tender an objection, your Honor. I thought we completed the Monsignor and the Vatican this morning.

THE COURT: I thought so too, but he says there is a point in all this and I am waiting. We can go on all day and all year, but this isn't really helpful, Mr. Feldshuh.

What is it that you want to ask him?

Q Does it read "Enclosed--"

THE COURT: The letter is in evidence. You can read it to the jury.

MR. FELDSHUH: I have read it, sir.

THE COURT: Then why do we repeat?

MR. FELDSHUH: We are now making refernnce to a resume of the Italians and Americans on the board and --

THE COURT: Do you want to establish he sent both resumes of the various American Italians?

MR. FELDSHUH: Yes, and I will ask him --

Q Was this the resume that you sent?

A I have no recollection, sir.

Q You have noticed that the date of this letter, Frank Exhibit D, in evidence, is dated May 12, 1970?

A That is correct, sir.

Q I ask you, sir, to look at Defendant Frank Exhibit G for identification, and look at the date of it.

Q May 3, 1970.

A Yes, sir.

Q Now, sir, I ask you to look there at the second page, the first paragraph on the second page.

A Yes, sir.

Q And I ask you, sir, was this the paper that you referred to in Exhibit D, in evidence?

A I have no recollection.

Q Will you look at it, please?

A I answered your question. I have no recollection, no way of knowing it.

MR. GOULD: Your Honor, I am confused. Do I understand the witness' testimony to be that is not his signature?

THE WITNESS: I said it doesn't look like it.

THE COURT: That is about the fourth time. Let's go on.

MR. GOULD: I didn't understand what he said.

THE COURT: The jury will understand. We have wasted now seven minutes on this one. Do you want to offer this letter?

MR. FELDSHUH: I will offer Defendant's Exhibit G for identification.

MR. SORKIN: Your Honor, I must object because it

hasn't been properly identified.

THE COURT: Would you let me see this letter which I believe is Defendant Frank Exhibit G?

MR. FELDSHUH: That is right, sir (handing).

THE COURT: I assume you want to offer all these appendages which are hard to read, some sort of Xeroxes here?

MR. FELDSHUH: If that is part of the complete document, yes. I am interested in the first page particularly.

THE COURT: The memorandum or letter.

MR. FELDSHUH: The first page of the attachment, also. I am willing to confine my proffer to those two pages.

THE COURT: Mr. D'Onofrio, take a look at this second page where it purports to talk about you, what might be called a brief resume or curriculum vitae, or what have you. Does that look familiar to you at all?

THE WITNESS: Not in this state, sir. This is a foreign typewriter of some sort.

THE COURT: I understand that. Do you remember ever preparing something like that or authorizing something like that to go out?

THE WITNESS: Well, I remember telling my girl to give them information oversews on me and she drew up a resume, but I don't know if this is it.

THE COURT: Is there anything in there that you

now think is inaccurate, all about you going through to this, that and the other place?

THE WITNESS: It is not inaccurate, but it could be a little bit misleading, sir.

THE COURT: In what sense?

THE WITNESS: Europeans take poetic exercise and it looks like I could be a graduate and that is not certainly the way I put it. If you notice I put thereafter Chicago, and so forth.

THE COURT: You claim therefore you had nothing to do with drafting ths or proposing that?

THE WITNESS: No, sir, it is not my work at all. I know nothing about it.

THE COURT: Of course you are aware of the covering letter, of what might be called the covering letter, from the firm of D'Onofrio, and so on, right?

THE WITNESS: Yes, sir.

THE COURT: Do you have any idea who might have written that signature?

THE WITNESS: It could be written by one of the secretaries that typed it. Maybe I dictated it. It is not my signature and I don't recall it at all.

THE COURT: You don't recall it?

THE WITNESS: No, sir.

THE COURT: Do you recall sending out any rough drafts, as used in the phrase here, of a prospectus of the Amitalia Fund?

THE WITNESS: I recall there must have been rough drafts sent out, but not in connection with that letter or anything to do with that. I don't recall anything with that. And, that is not my signature, to my knowledge, sir.

THE COURT: All right.

THE WITNESS: If it were, I would tell you, as I have before.

THE COURT: I am not arguing.

THE WITNESS: And the second batch of it I have no knowledge of. It is a completely foreign document to me in its entirety.

THE COURT: Will you hand that to Mr. Feldshuh.

MR. FELDSHUH: I renew the offer, your Honor.

MR. SORKIN: I object, your Honor. I don't this there is a proper foundation.

THE COURT: I will agree. I don't see any relevance and at this stage, at least, I won't receive it.

End 2A

hprf 2b pm 1 D'Onofrio-cross

Q What office did you hold in Amitalia Fund?

A I answered that question before, sir.

THE COURT: Yes, he did. Let's not repeat ourselves, please Mr. Feldshuh.

THE WITNESS: If you don't remember --

THE COURT: Just a moment, please, Mr. Witness. I thought we agreed this morning that we are going into something other than the clinical details of Amitalia.

MR. FELDSHUH: There are pages in here that are vital to this area of the testimony, your Honor.

THE COURT: I don't want that kind of response. Do you remember our discussion about this?

MR. FELDSHUH: Yes, I remember.

THE COURT: You do want to keep going in all these details?

MR. FELDSHUH: I want to get this one detail.

THE COURT: Let's hear it directly a..d without any further delay.

MR. FELDSHUH: All right.

Q Did you ever physically go to the Blackstone School of Law in Chicago, Illinois?

A I just answered that question.

THE COURT: He told us he took correspondence courses, Mr. Feldshuh.

MR. FELDSHUH: I know he told us that, sir.

THE COURT: I was sitting here and that is what I remember and I don't want to put my memory against yours, I'm sure I might lose but I'm pretty certain of that.

Let's go on, will you please.

Q Were you ever an associate member of the American Stock Exchange?

A Me an associate member?

Q Yes, sir.

A No, sir.

Q Did you ever say you were?

A No, sir.

Q Did you ever write you were?

A No, sir.

Q Did you ever say that you were an associate member of the New York Stock Exchange?

A No, sir.

Q Did you ever say you were a financial consultant of marketing of a national franchise organization?

A Yes, I have said that in the past. I think I have told Mr. Gould that.

Q What was the national franchise organization?

A Franchises International, sir.

Q Was that an American corporation?

A Yes, sir. I sold Edie Adams, Cut & Curl --

Q You had a company known in Europe as --

A That has been answered ten times, sir.

Q Can you identify as the stationery of D'Onofrio & --

A It looks like their stationery.

Q There is nothing on here that would indicate it is not their stationery.

MR. SORKIN: Objection.

A I just answered to the affirmative.

THE COURT: He has identified it.

A Generically it looks like D'Onofrio & Feeney, R.G. stationery.

Q Sir, in Defendant Frank's Exhibit D, in evidence, did you identify yourself as a member of the United States New York Stock Exchange?

MR. SORKIN: Your Honor, he said --

MR. FELDSHUH: Just a minute.

MR. SORKIN: I apologize.

THE COURT: I know what he said but I don't think it is fair to repeat it even though I believe you are correct.

Q Did you identify yourself as a member of the

U.S. New York Stock Exchange?

A I don't recall directing myself as a member. My firm that I represent is a member.

Q Look at Exhibit D in evidence and I ask you to look at the beginning of paragraph two. Will you read it out loud?

A "A few months ago a small group of former U.S. New York Stock Exchange members such as myself--"

Q All right, I don't need any more.

A That is erroneous.

Q That is not true?

A No, it is in error in dictating.

Q I see. It wasn't a lie to the Right Reverend Monsignor --

A I would like to say it was for your benefit but it was not.

Q How about for your benefit?

A I have nothing to benefit by lying.

Q But it is the fact nevertheless -- I will withdraw that.

Who were the other members of this small group of former U.S. Stock Exchange members such as yourself?

A George Van Aiken from Baer, Wald & DeBoer.

Q Was he a member of the New York Stock Exchange?

A I believe he was, yes, sir. Charles D. Urb.

Q And he was a member --

A Yes, sir, a small group. We were going to go together on it and Peter Rosenthal I believe was a partner and member.

Q You only believe that, is that right? You are not sure --

A I'm quite sure. I'm pretty sure. 99 and 100, like they say, for Ivory Soap.

Q But the one fact remains that you were not a member of the New York Stock Exchange?

A No, sir, I only worked for a member of the New York Stock Exchange.

THE COURT: Meaning by that A. T. Brod?

THE WITNESS: Yes, sir.

Q You didn't mention anything about Brod in this letter?

A I didn't work for him for --

MR. SORKIN: Objection.

THE COURT: You have read the letter to the jury, Mr. Feldshuh and you can make the argument. It is perfectly plain. The evidence is there.

MR. FELDSHUH: The evidence is clear, your Honor and I think it is out of the mouth of this witness --

THE COURT: I don't need to have you repeat my agreement.

Now, please:

Q Mr. D'Onofrio, you testified on your direct examination that you met Mr. Frank in September of 1968. Do you remember your testimony, sir?

A Yes, sir.

Q Will you tell his Honor and the jury where you met Mr. Frank? Was it at 144 East 44th Street, New York City?

A I answered that question.

THE COURT: We covered that this morning. Let's get on.

Q Sir, if you covered it this morning --

A You did.

THE COURT: I said this. Don't blame him. I am telling you to ask another question, Mr. Feldshuh. Do you have difficulty hearing me?

Q Sir, with regard to the mid-September 1968 meeting, did you discuss that meeting with Mr. Sorkin?

A Did I?

Q Yes.

A Of course, yes.

Q When did you discuss it?

A Sometime this year, but I can't place a date on it.

Q Was that the first time?

A Yes, sir.

Q Can you fix the date, sir, at all?

A I'll fix the date. I can't recall. From May to August sometime.

Q You remember your testimony on January 10, 1974 with respect to the grand jury as to the fact that Mr. Sorkin and you had discussed your narrative statement, prior thereto, do you remember that?

A Yes, sir.

Q And you wanted to make some corrections in your narrative statement?

A Yes, sir.

Q Sir, with respect to the meeting in September of 1968, that was the meeting where you said that Mr. Frank was informed that stock was going to be blown off to Mr. Bonavia and Mr. Weissinger, is that correct?

A The first occasion, yes.

Q And all Mr. Frank said at that meeting was, "If you have got some good stock or a hot number make sure I get in," isn't that right?

A No, sir. He added, "Remember, I didn't get any stock from the last number."

BY MR. FELDSHUH:

Q And what was the last hot number that Mr. Frank was referring to?

A Resource Control.

Q How did he know that?

A Because he was involved with us as a co-conspirator in it.

Q As a what?

A He was involved with us as a co-conspirator in that crime.

Q When was that crime committed?

A During the summer of 1968. The conspiracy ended somewhere about September of '68 when we made all our money.

Q Who else was involved in that --

A Mr. Stoller --

MR. GOULD: If your Honor please, I don't know what counsel is doing at this moment, why he is pursuing this subject which we have been at great pains to --

A He is asking me --

THE COURT: Just a moment, Mr. D'Onofrio. Yes, Mr. Gould, finish what you were saying.

MR. GOULD: All I can do is make an objection to the line of inquiry.

THE COURT: I would suggest that I would be

glad to sustain that and, Mr. Feldshuh, if you wish to press this despute my ruling, I'm going to ask you to come up to the bench and I will elaborate in detail as to why.

MR. FELDSHUH: I will go on to another subject, your Honor.

MR. GOULD: I move to strike out all the testimony elicited from this witness with respect to Resource Control as it only presents a Bruton problem, it presents a number of other problems. I think the simplest way to deal with it is to strike it out and ask the jury to disregard it. If it had been done on the part of the Government, I would know better how to deal with it.

THE COURT: I'm going to say to the jury this much because I do agree. This is for the benefit of all parties in this case. We are not concerned with a case called Resource Control, and I will ask you, ladies and gentlemen, to disregard the questions by Mr. Feldshuh and the answers so far as he was able to make them by this witness, Mr. D'Onofrio.

Q Sir, did you tell Mr. Sorkin that this is what Mr. Frank said and what was heard at this meeting in September 1968?

A I answered that question, Mr. Feldshuh.

Q Did you mention that in your narrative that you

gave to Mr. Sorkin?

A I believe not, sir.

Q Now referring to Stoller's Exhibit H in evidence, 3501-CC --

MR. SORKIN: Your Honor, I object because it is already in evidence that the narrative was last November '73 and Mr. D'Onofrio just finished testifying he told the Government between May and August of '74. So he couldn't possibly have put it in the narrative.

Q When did you first remember this, sir?

A I told you sometime between May and August of this year, but I can't place a date.

Q Of 1974?

A Yes, sir.

Q So I take it, sir, from September of 1968 up to May or June or July or August of 1974 you didn't remember it?

A I didn't recall it, no, sir.

Q Didn't recall it at all?

A No, sir.

Q Is that the reason why it didn't appear in 3501-CC, Stoller's Exhibit H, which you dictated on November 8, 1973?

A The reason it didn't appear is because I didn't

recall it at that time?

Q Right. Isn't that the reason?

A Yes, sir.

Q And this memorandum, Stoller Exhibit H, you are trying to recall all the events referrable to Training With The Pros?

A No, sir, that's not correct. To the best of my recollection at that time, under those conditions, with no documents, no reflections, no nothing; just going out with a hammer and telling me to saw wood.

Q What document would you have used to refresh your recollection about --

MR. SORKIN: Objection as to form.

A I have answered that.

MR. SORKIN: Mr. D'Onofrio, when anyone objects --

THE COURT: Gentlemen, again you are not profiting, anyone, by talking at the same time.

MR. SORKIN: Objection as to form, your Honor.

THE COURT: I will sustain that. It should be clarified for your own benefit, Mr. Feldshuh.

Q Sir --

THE COURT: Rephrase it, please.

Q Mr. D'Onofrio, during the course of Mr. Gould's interrogation you referred to the last paragraphs of your

narrative of November 8, 1973 --

A Yes, sir.

Q -- where you stated that you would need documentation or letters or something of that nature in order to refresh your recollection further. Do you remember your comments at the end?

A Plus my own recollections.

Q I agree with you, sir.

I ask you, sir: Did you need a document or a letter or any piece of paper in order to refresh your recollection as to this November 1968 meeting?

A No document did I need, no, sir.

Q So that it is the fact then, I am correct, am I not, sir, that this just came out of your head, recalling events that occurred six years ago?

A What is the question, sir?

Q I say this statement about what happened in the mid-September meeting and what Mr. Frank allegedly said in mid-September 1968 just came out of your head, there was no document that suggested it to you?

A I would say that is true, the full recollection came out of my head.

Q All right.

It is also true that until that time you didn't

mention it to Mr. Sorkin or Mr. Doonan; is that right?

A I had very little time to see them. You are absolutely correct.

Q There came a time, did there not, when you referred to a meeting in July of 1969 with Mr. Frank?

Do you recall that meeting?

A Is that the one concerning Miss Hertzfeld, describing of the documents, sir?

Q Yes, that is the meeting as to which you testified.

A Yes, sir.

Q It is the fact, is it not, Mr. D'Onofrio, that with regard to Training With The Pros, as you testified, you were very much involved in preparing the offering circular, which is Government's Exhibit --

A Yes.

MR. SORKIN: 1.

Q -- Government's Exhibit 1 in evidence?

A I would consider myself very much involved.

Q And you were discussing all of these things with Mr. Moss as to the contents of that offering circular, how it should be handled?

A And the attorney and the accountants.

Q Sir, with regard to the October 18, 1968 indication letter, you remember that indication letter --

A Yes, sir.

Q -- do you understand, sir?

A Yes, sir.

MR. SORKIN: October '71.

MR. FELDSHUH: October '71.

MR. SORKIN: Yes, sir.

MR. FELDSHUH: May I have Government's Exhibit 4?

(Pause.)

MR. FELDSHUH: Thank you.

Q You also discussed this letter, Exhibit 4 in evidenc, dated October 17, 1968 with Miss Hertzfeld, did you not?

A Discussed that letter with Miss Hertzfeld?

Q Was she present on the occasion when you spoke with Mr. Moss about it?

A I asked for all the books and records to be brought --

Q No, I'm talking about October 1968.

A I'm sorry. Was she present? Most of the time she was present. I don't recall at that meeting whether she was, but I would presume she was.

Q Right, sir.

There came a time, did there not, when with

regard to Training With The Pros the Securities and Exchange Commssion asked for a due diligence meeting in January of 1969? Do you remember that, sir?

A I have no knowledge.

Q Do you know --

A I don't recall it, no, sir.

Q Do you know from your knowledge with respect to offerings of this nature whether a due diligence meeting was held in January of 1969?

A I know there were some due diligence meetings on the accounting, but I have no idea as to their dates.

Q Do I understand that Mr. Moss didn't discuss with you the fact that there might have been a due diligence meeting prior to February 1969?

A I think Mr. Barton told me that he had one or two. I don't recall any conversations concerning due diligence meetings other than the accounting.

Q You did know that the offering, that the stock, became effective for public sale on or about February 4, 1969, is that right?

A Yes, sir.

Q With regard to your conversation with Mr. Barton that you might have had --

A Mr. who?

Q Was it Mr.Barton, you said?

A I just didn't hear you?

Q Mr.Barton at that time was your lawyer for Training With the Pros?

A Yes, sir.

Q With regar d to your discussions with Mr.Barton, did Mr.Barton know about the October 17, 1968 indication letter, Government Exhibit 4 in evidence?

A I don't recall, sir.

Q But he was the attorney, wasn't he?

A Yes, he was the attorney.

Q He would know about this indication letter?

MR. SORKIN: Objection as to what Mr.Barton might have known. If there was a conversation --

THE COURT: Yes.

Q Were you present at any time when there was a conversation amongst Mr. Moss, yourself, Mr.Barton, Miss Hertzfeld, where the October 17, 1968 indication letter was mentioned?

A I don't recall Mr.Barton ever being present at any of those discussions.

Q Didn't you just testify that you worked with the lawyer in connection with the offering circular?

A Yes, sir.

Q Wasn't he present during those discussions?

A He mostly told me what he was doing.

Q In those discussions you have no recollection of mentioning this indication letter to him?

A No, sir.

Q Sir, did you know whether Mr. Moss attended a due diligence meeting in January of 1969?

A I do not know, sir.

Q There came a time in time, sir, when the issue became effective on February 4, 1969, is that right?

A Yes,sir.

Q Did you know who of the SEC personnel were concerned with this offering prior to its becoming effective?

MR. SORKIN: Objection as to form, your Honor, who was to be concerned with.

THE COURT: Yes.

Q Who was dealing with the TWP offering at that time on behalf of theSEC?

A Gee, I recall back then, but I can't recall now other than he was a Jewish boy.

Q Would it refresh your recollection if --

A If you mentioned a lot of Jewish names, maybe I would remember.

Q How about Mr. Rich, does that name strike you?

A His name strikes me as only being head of the small business division, but nothing that it reminds me that it was Training With the Pros. Is Mr. Rich Jewish?

Q I don't know whether he is Jewish. If you feel that he is Jewish, I will accept your statement.

A That is the only way I can recall, Italian names, Jewish names, generically.

Q I see. At any rate, did Mr. Moss tell you with regard to the issue just before it became effective that he was having a conference with the SEC about the issue?

A No, sir. He never discussed him having a conference with the SEC about the issue with me, not that I can recall, sir.

Q You wanted the issue to become effective as rapidly as possible?

A Eagerly.

Q He did?

A Eagerly.

Q Say that again.

A I agree with you, as rapidly as possible.

Q You followed the course of its processing, did you not, during the month of January --

A The only --

Q 1969?

A The only course I could follow was to wait for the SEC to approve it and for the attorney to tell us it is approved tomorrow or the next day.

Q Do you remember a comment letter from the SEC?

A Sir, I don't remember a comment letter on Training With the Pros. I remember comment letters on a lot of other stocks. I don't remember the comment letter on Training With the Pros.

Q You were not shown a comment letter on Training With the Pros?

A I didn't say I was not shown it. I don't remember it.

Q You don't remember it today?

A I don't recall it.

Q About a comment letter?

A I don't know if there was a comment letter.

Q As far as Mr. Moss was concerned, he wasn't knowledgeable about SEC affairs to the extent you were, isn't that a fair statement?

A Very --

MR. SORKIN: I object to how knowledgeable Mr. Moss was on SEC affairs.

THE COURT: Yes. I would sustain that objection.

Q IN the course of your discussions with Mr. Moss about theTWP offering, did Mr. Moss in words or substance indicate to you that he had as much knowledge about the rules and regulations of the SEC as you had?

A He never said that to me, no, sir.

Q In your contacts with him, can you tell us whether he had that degree of expertise that you had?

MR. SORKIN: Your Honor, I object as to form.

THE COURT: Yes. I don't see how any human being can answer that, Mr. Feldshuh.

MR. FELDSHUH: All right, your Honor.

Q With regard to Mr. Moss, did he in words or substance ever report to you that at the due diligence meeting in connection with TWP Mr. Rich, the chief of that particular section, stated to him that the SEC did not desire shares in amounts of a thousand or more or more than a thousand to be sold by the company to any one person? Did he ever tell you that?

A I don't even remember the question you asked me. I'm awfully sorry, Mr.Feldshuh. I was concentrating --

Q I will rephrase it for you.

A You could rephrase it. It was so long, I couldn't concentrate.

Q Mr.D'Onofrio, do you remember a conversation with Mr. Moss immediately prior to February 4, 1969, where he talked in words or substance about the number of shares that could be sold to any one person?

A No, sir.

Q You don't recall such a --

A I don't recall him ever discussing that with me. In fact, my best recollection would be there was no discussion with him about that subject.

Q At that particular time, namely just before February 4, 1973 --

MR. SORKIN: 1969.

THE WITNESS: 1969.

Q I am sorry, 1969 -- did Mr. Moss say to you in words or substance that he showed Government Exhibit 4 in evidence to the Securities and Exchange Commission?

A MR. Feldshuh, I think I have answered you ten times that I recall nothing about such a meeting or a discussion with Mr. Moss, and you keep referring to parts of such a meeting. How am I to answer you other than no?

Q And I take it that the no that you are answering is your best recollection today?

A Yes, it is, sir.

Q Okay. With regard to an event that took place some five and a half years ago?

A With regard to that event you are talking about.

Q I see, sir. It is the fact, however, that Mr. Moss on or about May 1969 appeared at the SEC pursuant to an order of investigation, is that right?

I will withdraw that.

Was there an investigation by the SEC as far as you know in May 1969?

A I answered that question in Mr. Gould's cross-examination, sir. Do you want me to answer it again?

Q Mr.D'Onofrio, instead of giving me a speech, would you just answer it, please. Just tell me the answer.

A Am I supposed to keep repeating answers? I have repeated over and over again. Why can't you remember what Mr. Gould asked me?

THE COURT: No one has objected, Mr.D'Onofrio. Just answer it, and perhaps he is leading up to something.

THE WITNESS: I am sorry. Repeat the question, sir

Q Did you know in the early part of 1969, particularly on or about May 1969, that the SEC was investigating Training With the Pros?

A I have answered that to the affirmative.

Q Would you just answer it?

A I said I answered that to the affirmative, which means -- affirmative means yes.

Q Try to confine your answers to yes or no, please. Did you know that in May 1969, that Mr. Moss had appeared at the SEC?

A Yes, sir.

Q Did you know that Mr.Barton was the attorney for Mr. Moss at the SEC in May of '69?

A Yes, sir.

End 3B

Q Did you know or did you find out that Mr. Moss in the course of that testimony made reference to Government Exhibit 4 in evidence, letter of invitation dated October 7, 1968?

A No, sir.

Q You were never told that, were you, sir?

A Not by Mr. Moss or Mr. --

Q Were you ever told in words or substance that in the course of Mr. Moss' testimony to the SEC on May 27, 1969, that this, Government Exhibit 4 in evidence, was marked in evidence by the SEC as Exhibit 1?

MR. SORKIN: Your Honor, I will concede --

THE COURT: Sustained.

MR. FELDSHUH: Will you concede that it was so marked?

MR. SORKIN: Your Honor, I am sorry, I forgot the question and I had a lot of objections --

THE COURT: I am sustaining it because the witness said he knew nothing about it and we are bound by that. Let's go on.

MR. GOULD: If your Honor pleases I think the Government was asked for a concession that the document was marked at the SEC and I will join in that, because it will save us hours of time.

THE COURT: I suggest if this is so important any lawyer could have asked for this long ago. I assume it is a matter of record you gentlemen have in your possession.

MR. GOULD: Yes, sir.

THE COURT: Then why don't we do it?

MR. GOULD: The simplest way to do it is to ask Mr. Sorkin if he will concede that it was received, marked and examined bythe SEC.

MR. SORKIN: Yes, it was, your Honor. That was not the question --

THE COURT: No more rhetoric about that. That is not fair.

I don't think it is an appropriate comment by anybody because it is factually and transparently so not true. If there is any concession you want, everybody has transcripts among you lawyers, let's get to it and if you want to ask questions of this witness, let's ask questions.

MR. FELDSHUH: I am not going to ask a question, your Honor. I am going to ask for a concession of Mr. Sorkin.

MR. SORKIN: I want the record to be clear. We have not been approached about any concession prior to this time. This is the first time --

THE COURT: Nobody suggested otherwise, Mr. Sorkin.

Let's not get excited. What do you wish conceded now?

MR. FELDSHUH: I wish to have conceded now that on May 27, 1969, at Page 40 of the transcript of that session, the following appears. I now quote --

MR. SORKIN: It is not in evidence, please don't quote. I will look at it and see if I can concede it. We already concede it was marked at the SEC, and Mr. Moss appeared.

MR. FELDSHUH: I would like to read that portion into evidence.

MR. GOULD: It is simple for counsel to agree what part is relevant, mark it for identification at least and if he wants to offer it, read it to the jury.

THE COURT: Fine, but you tell me these things as if there is a presumption I should have known what you are up to. Believe me, I don't --

MR. GOULD: I am not suggesting your Honor should have known.

THE COURT: I hope you are not because I have listened to court trials for a long time and I have never received any indication in this fashion. May I suggest, gentlemen, if this is so important there is a good way to do it and we are not doing it that way, and we will take a recess and get at it and not burden anybody else in the

process.

Ladies and gentlemen, I am going to ask you to take a 10-minute recess at this point.

(Jury left the courtroom.)

THE COURT: Mr. Gould and gentlemen, if you will sit down and abandon the latest huddle on the zero yardline.

Mr. Feldshuh, I tried to do this off the record this morning p?litely and now I will do it on the record, not so politely.

If you want a concession, you ask your opponent or colleagues, whichever it may be, or all of them, before we get into open court with all these pregnant delays, which go on and on and on.

Second of all, if you want a concession, don't suggest by questioning D'Onofrio that he should make a suggestion because there is no evidence that he knows what is in those transcripts which he doesn't have, I don't have and the jury doesn't have.

Third of all, if you have got any questions, I wish you would get to them without these everlasting delays. This man has been on the stand, whatever you may think of him and you may think of him quite properly for all I know, he has still be on the stand, and we as lawyers now know the kind of answers he gives.

Now, I told you this morning in the robing room, you were very upset with me and I understand this. You are emotionally involved because you are defending your partner and I sympathize with you and with him, but that doesn't mean we have to sit around and do an unprofessional job.

I say to you, Mr. Sorkin, instead of reacting just make your objections calmly. And, Mr. Gould, if you have any more ideas communicate them in writing to your colleague or to me because I am sick of this. It isn't looking good for any of us and I am ashamed of us. I know none of you mean it, but it looks like a very bad show.

Now, what is it you want conceded from these people?

MR.FELDSHUH: I want it conceded that at the SEC hearing of Mr. Moss, that the following colloquy took place --

THE COURT: Why don't you show it to Mr. Sorkin.

MR. FELDSHUH: I showed it to him, your Honor

THE COURT: Would you look at it, Mr. Sorkin.

MR. FELDSHUH: This is the second time I have shown it to him.

THE COURT: I feel like those people out at Snake River just before Evil Knievel went over the side. That was a rip-off in the first degree, and let's hope that that

is not what you are up to here.

MR. SORKIN: Just show me up to where.

MR. FELDSHUH: I will show you. Page 40, Line 11 through Line 18, Page 41. That is one request.

MR. SORKIN: I got it.

THE COURT: And you thought you were going to do this in front of a jury. That took us four minutes, to find out what you really had on your mind.

MR. FELDSHUH: I would like you to concede that he testified on Page 5, Line 10, through Page 9, Line 5.

THE COURT: This is unbelievable. Will you please explain to us , with the pregnant pauses -- this isn't anything we ought to be doing at this juncture. You ought to put in Moss' testimony.

MR. FELDSHUH: Certain evidence.

THE COURT: No wonder we have these infinite pauses between questions and cross of the witness. You are trying to harvest apples when you ought to be harvesting oranges, one thing at a time. You are wasting everybody's time and from your own viewpoint it is about as clear as mud.

MR. SORKIN: Your Honor, there are four pages here. I would like the opportunity to read them and it will take a little while to read them.

MR. GOULD: May I be heard, your Honor? I am getting completely bewildered.

THE COURT: I have been bewildered for the last hour.

MR. GOULD: I gather now that what counsel now is trying to do is to get the Government to stipulate or concede in some way the Moss testimony.

THE COURT: Exactly.

MR. GOULD: Without my arguing the point, it is obviously inappropriate at this moment to do that.

THE COURT: That is precisely one of my points.

MR. GOULD: I would therefore urge counsel to withdraw any such proffer at this time and to confine himself to the simple proposition, which I thought I was trying to help clarify, that the Government should now concede not on the basis of the Moss testimony as testimony, but on the basis of this official document as an official document, that the invitation letter,Government Exhibit 4 in this case, is a copy of a document which was before the SEC and marked in evidence.

THE COURT: This has already been conceded.

MR. SORKIN: Yes, sir.

MR. GOULD: After that, it has nothing to do with the Moss testimony.

THE COURT: That is the whole gramen I concluded after this fumbling around in the last seven minutes. Not only when the jury is out of the room can we make any time, or since. Mr. Feldshuh, I certainly would sympathize with any attempt you might have as to certain portions of the Moss testimony or some other witness at the SEC, but that is a matter we can take up when we are not in the fifth day of the testimony of D'Onofrio, who isn't going to give you any evidence on this score anyway.

We are running around the rat hole here trying to do six things at once.

MR. FELDSHUH: Your Honor, I don't know what Mr. D'Onofrio's answers are going to be until --

THE COURT: He can't make any concession as to what is an official transcript of the SEC. And if he did I would cut him off. That taxes my credulity. Why not do this with someone who is more reliable at this point? You gentlemen have the transcripts. So does the jury by this time. D'Onofrio does not, the jury does not and the Judge does not and why take our time with this?

MR. FELDSHUH: I am ready to go forward with the concessions.

THE COURT: I don't know what concession you are talking about other than what Mr. Gould just mentioned.

MR. FELDSHUH: We haven't got before the jury at this moment these concessions, your Honor.

THE COURT: Mr. Feldshuh, I am going to repeat for the last time. We are mixing up apples and oranges. I have no objection to your getting a brief, succinct concession that a document in evidence here was also marked before the Commission. That has been done, as I understand it.

MR. FELDSHUH: It has not been done.

THE COURT: I have told you --

MR. GOULD: May I try to help, your Honor? I think I can help, your Honor. I understand that it is stipulated among all counsel that at a hearing before the Securities and Exchange Commission on Tuesday, May 27, 1969, Mr.Moss appeared, that further at Page 40 of the transcript of that testimony, which is here, the document which is Government Exhibit 4 in this case, was received, marked as Exhibit 1 in that case, and then marked Division Exhibit Moss 1 that day, and that is the identical document which is Government Exhibit 4 in this case.

THE COURT: No doubt about it. I have said that for the fourth time.

MR. GOULD: I have added the dates, that is all.

THE COURT: If there is some big deal in this gobbledygook --

MR. GOULD: That is all I have added.

Is that all you want?

MR. FELDSHUH: I want the fact that there was a due diligence meeting on or about February 4, 1969, with the representatives of the SEcurities and Exchange Commission, and at the due diligence conference, there was a discussion as to the minimum number of shares which could be sold to any individual and --

THE COURT: Mr. Feldshuh, I have told you at the proper time, fine, you can try to get into this. But, we have a witness on the stand whom you are supposed to be cross-examining, and there have been enough delays and pregnant pauses already without trying to do something that has nothing to do with cross-examining D'Onofrio.

I understand that you want to put the two together but that is what a trial is for. We don't do everything at once on the head of the pin or at the same time.

MR. FELDSHUH: Your Honor --

THE COURT: You baffle me.

MR. FELDSHUH: Your Honor, Mr. D'Onofrio testified --

THE COURT: I know what he testified.

MR. FELDSHUH: That is why it is relevant.

THE COURT: That doesn't mean you refute him at this moment.

MR. FELDSHUH: All right. Can I get this in?

THE COURT: You don't refute everything at the same moment. If that were the standard we would have been done days ago.

MR. GOULD: Your Honor, Mr. Sorkin advises me now he is prepared to concede for all the purposes of this trial that there was a due diligence meeting with representatives of the Securities and Exchange Commission, including Mr. Rich, prior to February 4, 1969.

MR. SORKIN: I concede that, your Honor.

MR. FELDSHUH: Wait a minute. Don't stop there. And that at this due diligence meeting there was a discussion about the minimum number of shares which will be sold to the individuals.

MR. GOULD: He can't concede that now, your Honor

MR. FELDSHUH: Or that the transcript states --

THE COURT: The point I have been making, Mr. Feldshuh, and I will not repeat it again, you want all this and in its due course and due time, fine. But, not now. Your duty is to cross-examine this man, and we have wasted all afternoon with no great strides in that endeavor. So why confuse yourself and the jury and me with something that I have told you four times now you have a right to get at later in a proper way.

MR. FELDSHUH: All right, sir, I will do it later on in a different way.

(Recess.)

(In open court; jury present.)

THE COURT: Now Mr. Feldshuh, before you begin, to make absolutely sure, if you would like to repeat the concession which the Government made as to the indication letter being marked and so on, please do so.

MR. FELDSHUH: Your Honor, with regard to the concession, may I respectfully request that since we put it on the record that the stenographer read it. If he can't locate it quickly, I will state it.

THE COURT: May I suggest it would be an imposition for the stenographer. It is so simple.

MR. FELDSHUH: Very good. Your Honor, members of the jury, it has now been conceded by the Government and by counsel that at an SEC investigation hearing on May 27, 1969, Government Exhibit 4 in evidence, was marked into evidence at that hearing on May 27, 1969, as Exhibit 1 in the SEC investigation.

MR. SORKIN: There is one other concession, your Honor, which we also agreed to.

MR. FELDSHUH: Then, your Honor, there was a further concession that prior to February 4, 1969, there was a due

diligent meeting held by the Securities and Exchange Commission with respect to Training With the Pros stock, and that Mr. Moss was present at that meeting as president of Training With the Pros.

BY MR. FELDSHUH:

Q Mr.D'Onofrio, you did have occasion to use nominees prior to 1968 in connection with your purchases of stock or dealing in stock?

A Yes, sir.

Q And you did use Xanadu Corporation as one of your nominees?

A Yes, sir.

Q And you used that corporation even though as a matter of record you didn't own any stock in that corporation?

A At that time, no, sir.

Q Now addressing yourself to 1968, with regard to the ownership of stock in Xanadu, you used nominees to act on your behalf?

A Yes, sir.

Q This use of nominees by you was much prior to mid-September 1968, was it not?

A Yes, sir. Excuse me, what date, sir?

Q Mid-September 1968.

A Not much prior.

Do you mean six months? What do you mean by "much"?

Q Did you use nominees in 1967?

A I don't think so, sir.

I think the corporation was formed in 1967, in December or November, and I didn't start using nominees until after that date, considerably some time.

hprf 4b pm 1 D'Onofrio-cross

Q As you testified, Xanadue was formed for the purpose of aiding and assisting you in dealing in securities?

A No, sir. No. It was formed for the purpose that I was coming up, had been under investigation by the Federal Bureau of Investigation and was coming up for a forthcoming trial which I thought some day would be on bankruptcy fraud and I wanted to keep my assets away from the United States Government and other possible creditors if I was ever declared a bankrupt person which didn't happen.

Q That was your purpose in forming Xanadue?

A That is correct, sir.

Q Thatwas your purpose in using Xandadue as a nominee?

A At that time, yes.

Q Mr. Frank had nothing to do with the formation of Xanadu?

A Absolutely not.

Q You did use Mr. Barter as a nominee, did you not?

A Yes, sir.

Q That was prior to mid-September 1968?

A Yes, sir.

Q As a matter of fact it was Mr. Barter who lent $30,000 to DPP prior to September 1968?

A I think it was my fund but he made the lending of it.

hprf 2 D'Onofrio-cross

Q That $30,000 even though described in the offering circular as coming from Mr. Barter, really came from you?

A Yes, sir.

Q And he was also used to hide your assets from other people; is that right?

A Yes, sir.

Q Sir, did you use any other nominees during this period prior to mid-September 1968?

A Yes, sir. I used Len Frank Wu as a nominee in my settlement of a million dollar claim against me by two former officers and directors of Evans Amityville Diary which went defunct and he was my nominee and made the payments consistently and regularly under his name although I gave him the money.

I don't know how many thousands of dollars and I used Mr. Wu as nominee for the National Bank of North America, then Meadowbrook National Bank, to settle the $75,000 claim.

Actually, it was a $400,000 indebtedness from my former dead partner and he was used as nominee for the purpose of paying them and I funneled the funds.

Q Did you use anybody else as a nominee at that time, sir?

A You got to give me a date again.

Q Did you use A. T. Brod at that period of time?

A As a nominee, absolutely not.

Q Addressing yourself to mid-September or mid-November 1968, was there anyone else you used?

A Mr. Hyman Tempkin,but I don't remember the date, whether September, October or November. I have no recollection of the actual date.

Q Was that in connection with the securities?

A Yes, sir, in connection with Bank Hofmann.

Q Was there anyone else you used as nominee prior to mid-September?

A I don't think so, Mr. Feldshuh. I think you have exhausted my use of nominees, to my recollection.

Q So it is the fact that at the time you allegedly had a conversation with Mr. Frank, in November of 1968, as you testified, with respect to the use of nominees, you were totally familiar with the use of nominees prior thereto, were you not?

A Not in the context with a public offering.

Q Except that Mr. Tempkin was used from the point of view of securities, is that right?

A Yes, sir.

Q Wasn't that in connection with a public offering, sir?

hprf 4 D'Onofrio-cross

A I was trying to hide my assets from a woman I was living with who had gone to the local constabulary and she had now control. She had her name on my account and he helped me in hiding my assets from a strange woman.

Q Mr. D'Onofrio, with respect to the use of Mr. F. Scott Barter --

A R. Scott Barter.

Q Wasn't he going to get stock?

A Himself personally for doing it?

Q As your nominee?

A Yes.

Q So it is the fact that you did use a nominee, Mr. Barter, prior to mid-September, 1968?

A Not for the purpose of public offering. I rephrased that answer, sir.

Q Do I understand you, sir, that prior to mid-September -- I withdraw that. When for the first time did you understand that TWP was going to become a public offering?

A Around April or May of 1968.

Q When did Mr. Barter loan the $30,000 to TWP?

A I can't recall unless I had the prospectus here and could read the date.

Q You will agree however it was sometime in the early part of 1968?

A I will agree to nothing unless I can read it.

Q Your recollection today is you don't have a general time capsule as to when --

A Yes, a general time from May of '68 until February 4th, '69, at which it became public.

Q Within that period of time?

A There were many loans. It added up to 30. There was $10,000, $5,000, $10,000, so I can't tell you the dates.

Q Okay.

From May 1968 down through February of '69, Mr. Scott Barter was your nominee?

A Yes, sir.

Q When you spoke to Mr. Frank in mid-November of 1968 you had had the experience of using nominees prior thereto? Is that a fair statement?

A Yes, but not in relation to public offerings.

Q I understand that. That wasn't my question.

A I'm sorry.

Q All right. Now, sir, you also testified, did you not, about a fee payable to Mr. Frank. Do you remember your testimony as to that fee payable to Mr. Frank in

connection with TWP?

A In connection with what?

Q Let's see if I can help you.

A Are you talking about --

Q Was there any time you knew of an arrangement whereby Mr. Frank was to be paid a fee of $15,000?

A Fee?

Q Yes.

A No, money. Not a fee. For him showing us how to do it without getting caught. That is not a fee.

Q You didn't consider that a fee?

A No, I considered it a contribution or like we would bribe somebody.

Q And that was in connection with him telling you about the use of nominees, isn't that right?

A Telling us how to do it without getting caught.

Q And the how was about nominees and the use --

A A lot of other things. How -- do you want me to go on?

Q Mr. D'Onofrio, in your direct testimony, you mentioned, did you not, and you testified under oath that this so-called $15,000 was in connection with Mr. Frank's telling you to use nominees. Do you remember that?

A Plus 1,000 shares of stock, plus -- there are

hprf 7 D'Onofrio-cross

a lot of others. You are asking a two-part question.

Q I am not asking you anything but that. Would you please confine your answer?

A That is not the total truth.

Q Mr. Sorkin is here to get out anything else. Now could we go on, please.

Did you ever pay $15,000 to Mr. Frank?

A No, I didn't.

Q Did you ever pay any part of $15,000 to Mr. Frank in this connection, as you have testified?

A Yes, sir.

Q When did you do that, sir?

A In some settlement in Switzerland, I gave Jerry Allen my $5,000 --

Q Wait a minute.

MR. SORKIN: He is answering, your Honor.

MR. FELDSHUH: I asked him when, not how.

A I'm sorry, when?

Q Yes.

A Sometime after we made the $900,000 score. So, it would have to be --

Q Could you fix your mind to a period of time, please, so --

A I am going to say in 1969, summer, or at one point

when Mr. Allen was allowed to go to Europe and I can't remember that date.

Q Was Mr. Frank there?

A No, sir.

Q Was any representative of Mr. Frank's office there?

A Absolutely not, sir.

Q After that occasion, did you in any way -- I will withdraw that. After that occasion did you ever speak to Mr. Frank about this $15,000?

A No, sir, not this $15,000, no, sir, nor did he speak to me.

Q Coming to, sir, to the so-called episode at the end of 1971 and the beginning of 1973, when you were standing on the other side of an opaque door. Do you remember that episode, how you testified as to that?

A If I remember the episode?

Q Yes, sir.

A I remember my testimony.

Q As to that episode, right?

A Yes, sir.

Q Did you hear Mr. Frank's voice through the transome in any way?

A Yes, sir.

Q Was there any mention at that time of the $15,000

fee?

A No, sir.

Q Or the fact that you paid any part of the $15,000 fee?

A No, sir.

Q Mr. D'Onofrio, in connection with your narrative of November 8, 1973, 3501-CC, Stoller's Exhibit H in evidence.

MR. SORKIN: I don't think it is in evidence.

MR. GOULD: Received without objection.

MR. SORKIN: The statement, yes.

Q I ask you to look through this and show me any place throughout this where you mentioned a $15,000 fee to Mr. Frank. Just look at that.

A Do you want me to read the whole thing?

Q Just glance at it.

A How can I glance at it. I have to read it.

Q Haven't you read it before? Didn't you read it before today?

A A couple or three times.

Q Do you remember on occasions you read it, do you remember anything about a $15,000 fee --

A I only remember the 1,000 shares of stock.

Q That is all you remember being said on November

8, 1973?

A About the 1,000 shares of stock, right.

Q Did you ever tell Mr. Sorkin anything about a $15,000 fee?

A Yes, sir.

Q When did you tell him that?

A Somewhere between May and August of this year.

Q Of this year?

A Yes, sir.

Q Sir, my recollection is that you sat down with Mr. Doonan in May of 1973, isn't that right, sir?

A Yes, that --

Q After you came back from that episode in England?

A Yes, sir.

Q And you were in the --

A 1974, I'm sorry. I said 1973.

Q I beg your pardon?

A I remember telling Mr. Sorkin somewhere between May and August 1974, this year. I may have said 1973.

Q But you meant, did you not, that you said nothing about this between May of 1973 and November 8, 1973, when you got up this narrative?

A I think I have explained that narrative so completely --

hprf 11 D'Onofrio-cross

Q Did you tell Mr. Sorkin --

A No.

MR. SORKIN: Objection, your Honor. I think it is clear.

A It is very clear, I didn't.

MR. FELDSHUH: I'm satisfied with that answer, your Honor.

Q On January 19, 1974, when you testified before the grand jury, you didn't mention that $15,000, et cetera, did you, sir?

A That is a redundant question because I told you I only remembered it between May and August.

Q Just answer yes or no, that is all. If you have a recollection --

A Answer redundant questions?

THE COURT: Just a moment.

Q Please answer yes or no, Mr. D'Onofrio. We know you have been a witness before. Just answer yes or no.

A I have answered the question.

THE COURT: Gentlemen, neither one of you hear very well and I apologize to you but when I try to intervene when you ask the Court's intervention you have to stop.

MR. FELDSHUH: I beg your Honor's pardon. I didn't hear you.

THE COURT: I accept your apology and I will try to speak louder.

Let's go back. I do believe he has answered the question at least once but I will allow it once more.

Q Sir, did you mention the $15,000 fee to the grand jury on January 10th, 1974?

A No, sir. I don't believe I did.

Q Sir, did you mention the $15,000 fee to Mr. Doonan in May of '73?

A You keep saying fee and that is what is causing me to hesitate. It is not a fee.

THE COURT: Mr. D'Onofrio --

THE WITNESS: $15,000. Don't say fee.

THE COURT: I didn't say fee. I am asking you now, sir, did you mention the sum of $15,000 to investigate-- in what month?

MR. FELDSHUH: May of '73.

THE COURT: To Mr. Doonan.

THE WITNESS: I'm not sure.

Q With regard to the grand jury, you didn't mention it to the grand jury, January 10th --

A Just the stock, in relation to the $40,000.

hprf 13 D'Onofrio-cross

Q Mr. D'Onofrio, wouldn't you please confine your answers?

A You said a sum of money.

MR. FELDSHUH: No further questions, your Honor.

MR. GOULD: At this time, your Honor, since it is too late for another witness, could I have about two minutes so Mr. Sorkin can deal with redirect? I just have two or three questions I want to get in.

THE COURT: I take it you do have some redirect.

MR. SORKIN: I do, your Honor.

THE COURT: You have thought of some additional cross, in other words?

MR.GOULD: Yes, things that were suggested --

THE COURT: All right. Why don't you do those now and Mr. Sorkin will have a chance to redirect the next day.

RECROSS EXAMINATION

BY MR. GOULD:

Q I understand that you worked for the Vatican?

A No, sir, I did work for them. I didn't work for the Vatican. I tried to do work for them.

Q You didn't say that. I heard you wrong then.

A Actually, a colloquialistic expression, when

somebody is doing work for somebody.

Q Did you not testify in this case, "I did some work for the Vatican"?

A I did some work for the Vatican, yes, sir.

Q You did some work for the Vatican.

Who employed you?

A I was employed by IFE, and I --

Q You didn't work for the Vatican. You worked for IFE?

A That is correct, sir.

Q When you say you did some work for the Vatican that was a loose way of dealing --

A No, sir, not loose.

Q Did you or did you not do work for the Vatican? Yes or no.

A I did a lot of work.

Q Now, this cardinal that you saw at the Vatican, what building was he in, sir?

A He was in the -- you mean to describe the building?

Q The name of the building.

A I don't know if it had a name. I couldn't recall the name. Where the general offices are.

Q Which offices?

A The general offices of the Vatican.

hprf 15 D'Onofrio-cross

Q The general offices.

MR. SORKIN: Your Honor, I don't think this is proper cross. This is like redirect --

THE WITNESS: Redirect.

MR. SORKIN: Please, Mr. D'Onofrio.

Mr. Gould had the opportunity to go into this on his cross and --

MR. GOULD: I said that is what I was doing, trying to get this in so we wouldn't have it on redirect.

THE COURT: Or recross.

All right.

Q You said that the cardinal that you saw was the secretary for foreign affairs for the Vatican?

A Secretary of State.

Q Secretary of State?

A Or Undersecretary of State or something of that nature.

Q But he was a gentleman who didn't speak English?

A Yes, sir.

Q You used an interpreter with him?

A Yes, sir.

Q Did you say you got a diploma from this law school in Chicago, Blackstone?

A Yes, sir.

Q Have you got the diploma?

A Yes, sir.

Q Where is it?

A Hanging in my mother's home in her bedroom.

Q Are you going out there between now and the next time?

A No, sir. It is quite a long way from here.

Q Where is that?

A In Florida. But, I think I may have a copy for you in my probation file.

Q Would you be good enough --

A If I can contact my probation officer between now and the end of the trial, I think I have a photostat of it.

Q I would just like to see it. Just one more question.

Didn't you testify in this case that you conducted seminars for the American Management Association?

A A seminar, sir.

Q What seminar did you conduct?

A On assistance to the presidency and various functions thereof at Saranac Lake. I guess you want the year?

Q Yes, and the nameof the seminar.

A I said the name of the seminar was on the

functions on the assistant to the president.

Q Did the American Management Association know you were there?

A Yes, sir. There were 12 assistants to the presidents of various large corporations conducting the seminar, a verbal seminar and written, for many days, about eight or nine days.

Q You mean you were a participant?

A Yes, sir, instructional participant.

Q You paid a fee to go to the seminar?

A All men going to the seminar pay a fee. It is a contribution, nonprofit.

Q You didn't conduct the seminar? You participated?

A I conducted along with 16 other --

Q Did they know your academic qualifications?

A They were very little but whatever little I had they knew.

Q They knew about it and when they knew about it they invited you to conduct the seminar?

A They knew about it.

Q They knew about it when they invited you to conduct the seminar?

A They didn't invite me. It was in which all the assistants to the presidents, after being qualified after

submitting their background.

Q I have one question really and then I'm finished with you.

A I've heard that before.

Q I'm sorry.

A It is just that I have heard it three times.

Q I'm sorry about it.

You mentioned a man named Scott Barter?

A R. Scott Barter.

Q What is his relationship to you?

A He is the son of the mistress I was telling you about.

Q You mean Muriel Barter?

A Muriel J. Barter.

Q She is a woman that you lived with but never married?

A That is correct, sir.

Q Now my question:

Did you tell Muriel Barter that you were going to get, get those people who didn't play ball with you?

A No, sir.

Q Is it a falsehood that you ever made that statement to her?

A The statement is false that you are making to me

that I made to her.

Q In other words --

A Put her on the stand and let her tell you.

Q If she says you said that that is a lie?

A Then she perjured herself.

MR. GOULD: Thank you very much. I have nothing further.

THE COURT: What year were you participating in the seminar for AMA?

THE WITNESS: 1964, '63, sir. I'm not really sure of the year.

THE COURT: Ladies and gentlemen, we will suspend now and as you know because of the religious holidays we will be in adjournment until this Thursday morning, which is the 19th, and we will resume at 10:00 o'clock. I hope you have a pleasant two days away and gain, in my best judiciary fashion I have to caution you to put the case out of your mind and not talk to anybody about it.

Counsel, please come up.

(Jury left courtroom.)

THE COURT: Let me say something to you and I will put it off the record.

(Adjourned to September 19, 1974, 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Ramon N. D'Onofrio (Resumed)	872			

EXHIBIT INDEX

Defendant Frank	Identification	In Evidence
A		921
B		921
C		921
D	940	941
E	940	
F	940	
G	957	

United States of America

vs

Philip Stoller and Martin Frank

New York, New York
September 19, 1974-10:00am

(Trial resumed.)

(In open court, jury absent.)

MR. GOULD: If your Honor please, some days ago while we were engaged in the cross examination of a witness D'Onofrio I asked the Government to produce the witness vouchers, my purpose being to enable me to ascertain how much had been paid to this man over the period of his cooperation with the Government.

There were some pieces of paper produced which I was informed were incomplete and are probably illegible in some of the important respects. So I asked Mr. Sorkin to have a search made for the originals or good copies and I'm now informed that it is difficult, if not impossible, to obtain them.

I just don't know anything about the method of recordation or the method of storage, but it would seem to me that this is something that is susceptible of delivery to us.

What I would suggest rather than waste the

Court's time is that the Court on my application, which I now make, direct the Government to find these papers and produce them for us so that we don't hold anything up.

If we decide that they afford a basis for additional cross examination, bring Mr. D'Onofrio back so that we can cross examine him on it. I think that is a fair treatment of such.

THE COURT: Do you mean to say, Mr. Sorkin, that somebody in your office is claiming they can't produce these?

MR. SORKIN: No, your Honor. We are not claiming that, your Honor.

The United States Attorney's office, your Honor, gets the bottom copy, which is a yellow sheet. On the yellow sheet is is clearly visible the days that Mr. D'Onofrio is here and where he traveled from and to.

On the bottom, under part two, there is a witness claim for fees and allowances. On some of them it is legible. On most of them I would say or at least half of them it is not legible. We inquired of the United States Marshal's office and we were told that the witness vouchers, the originals from April of '74 through today's date, are in Washington, D.C. May '73 through Marcy of '74 are down in the Marshal's office. They are not in alphabetical order.

They are in chronological order. There are some 3,000 to 4,500 witness vouchers which the Marshal keeps and apparently staples together with witness vouchers from every witness who testified and then puts a summary of the amount paid to all the witnesses.

These are all stapled together downstairs. If your Honor wishes, we would have to go down to the file cabinets of the Marshal's office and start pulling out these several thousand vouchers. We have some guide because of the date on here when Mr. D'Onofrio appeared, but from what we can gather, going -- complying with Mr. Gould's request, it is quite a task. We will begin it.

THE COURT: With all that is going on in this world we come down to this. Sooner or later these are the issues which -- small wonder nobody wants to do much for the courts. They indulge in exercises in trivia.

First of all, Mr. Gould, do you really want all this stuff?

MR. GOULD: I must say when I made the request I thought it would be an easily accomplished task.

THE COURT: I'm sure you did.

MR. GOULD: I'm astonished to learn there is this much complication about it.

In view of the attack on this man's credibility

and on his motivation, the nature of the whole cross examination, it is obviously important to us to know whether he is really been living on what the Government gives him.

The only way I know of ascertaining that other than asking him is to ask the Government --

THE COURT: I understand the general relevance. All I'm trying to suggest to you is, in our insane way of doing things in the courts these days, there has to come a time when reasonable men cut through the bureaucratic nonsense. You read these splendid goings on in the courts like I do and you know we are now reduced to trivia, 99 per cent out of 100. A search for the truth is something that is a fairy tale in our American criminal courts today, at least in the federal ones. On the other hand, I see the general relevance, you are quite right. We are also bogged down by the fact that the United States Marshal in this district has always been understaffed, under manned and rather short on ability to keep his records. We know that.

I suppose what I could do is utter a splendid order which to me is a mockery. I know what is going to happen. We will here some more bleats and nothing will come of it. I certainly don't blame you and your client for making this application which I will grant because if I don't, why,

there will be some major constitutional problem which will be dilated and extensively for the next three years. We all know that, too.

May I make one possible breakthrough, suggestion, although doubtless few people, if any, say for you will share in this view.

Mr. Sorkin, doesn't someone in your office know about how much, and I don't in st it be to the penny, although there is probably some constitutional right to the penny kind of computations -- doesn't someone know the total approximately of what this man has been paid in witness fees?

MR. SORKIN: We do, your Honor. Mr. Gould wanted the originals so he could see the figures on here.

THE COURT: Forget what Mr. Gould originally wanted. He knows what I'm talking about.

MR. SORKIN: We do, your Honor.

THE COURT: All right.

If you have that, Mr. Gould, would it possibly sum up the event? I can't argue with you.

MR. GOULD: I want to help.

THE COURT: I know you do. I wouldn't waste my breath if it weren't somebody like you.

MR. GOULD: First of all I find it incredibile.

THE COURT: I don't. I'm a Government servant. I don't find it incredible at all. I don't approve of it.

MR. GOULD: I was a Government servant once.

THE COURT: Things are worse.

MR. GOULD: If you asked me how much I paid a witness over a period of time, I would be able to tell you. They can't. They say they can't.

THE COURT: When I was in office we knew, too.

MR. GOULD: Here is what I would suggest. In this summit conference that they are going to have tomorrow I would suggest that the Government, Mr. Sorkin's office, provide from the tragically meager records which they have the following items:

Number one, whatever records they have; two, their best reconstruction of how many times he was here, what they paid him and, most important, whether he was required to give proof of his expenses and, if so, what proof he gave.

Of course, that is what I am principally interested in.

I know your Honor was a little disturbed at my cross examination about the room in Las Vegas, the room he rented in Las Vegas.

THE COURT: I was disturbed?

MR. GOULD: I thought you indicated -- it doesn't

matter.

You will recall, I asked him about this room that he had in Las Vegas which he never set foot in. It is an old gag when you want to pay these fellows off, you give them a place somewhere else --

THE COURT: I don't quarrel with the relevancy of what you are seeking. I'm only concerned with the tragedy that faces American institutions, that we are drowned in a sea of bureaucratic nonsense, trivia and incompetence. We know that. In order to get some trial to move, you know, we lawyers, we live in a world of Alice's garden. We read these opinions as to what goes on in the courts. That is ridiculous.

MR. GOULD: Let him try to do what I'm suggesting. If we can't get anywhere on that --

THE COURT: We will have to do it the hard way.

MR. GOULD: Yes.

THE COURT: I agree.

MR.GOULD: That is good enough for me right now.

One other thing I would like to suggest to your Honor. I anticipate we are now approaching the stage in this trial, I gather from the wires that I see around the room, that we are going to get some tapes and there are going to be be conversations.

I know that your Honor is going to be meticulous in the charge to the jury on the conspiracy theory and what is admissible against each defendant. I wonder if it would not be appropriate at this stage to indicate something to the jury about how the conversations of co-conspirators, let's say outside the presence of one of the defendants, are being received only subject to the establishment of a conspiracy. I think they are a little confused about it.

Maybe I'm confusing everybody.

1B

THE COURT: I don't quite understand what we are talking about. As far as I know, we are still with the witness D'Onofrio.

I think we ought to finish D'Onofrio without me making --

MR. GOULD: I will make an appropriate motion at an appropriate time. I realize it is premature. I withdraw it.

THE COURT: Gentlemen, our jury is cooling its heels. May I suggest we get to it. We have expended 15 minutes on subjects which I think we can now forego for a while.

Are you ready, Mr.Sorkin?

MR. SORKIN: I am, your Honor.

THE COURT: Is this man D'Onofrio on the premises?

MR. SORKIN: He is, your Honor.

THE COURT: Very good.

(Jury present.)

R A M O N N. D' ON O F R I O resumed.

THE COURT: Good morning, ladies and gentlemen.

MR. SORKIN: May I proceed, your Honor.

THE COURT: Please do.

REDIRECT EXAMINATION

BY MR. SORKIN:

Q Mr. D'Onofrio, you were asked certain questions on

cross-examination about the testimony in the Pfingst case, whether you had testified at the Pfingst case.

Do you recall that?

A Could you speak a little louder?

Q Yes. You were asked certain questions on cross-examination about your testimony in the Pfingst case, whether, in fact, you had testified. Do you recall that?

A Yes, sir.

Q Were you asked questions, Mr.D'Onofrio, in the Pfingst case concerning Swiss banks and stock manipulations?

A Yes, sir.

Q Did you testify in the Pfingst case --

MR. GOULD: I object to this, your Honor. This is improper redirect. What difference does it make?

THE COURT: I didn't get the completion of the last question.

Q The question was, I believe, were you asked certain questions with respect to Swiss banks and stock manipulations in the Pfingst case.

THE COURT: I am inclined to sustain the objection. I don't see what that has to do with our case.

MR. SORKIN: Your Honor, on cross-examination he was asked certain questions with respect to had he testified against his former friend --

THE COURT: That is correct. Of course he was. That doesn't make this particular questinn very helpful here.

MR. SORKIN: If I may develop that, your Honor, I think we can get the relevancy.

MR. GOULD: Your Honor --

THE COURT: I sustain the objection. If there is something you want to ask him directly about Swiss bank accounts, fine. Let's not key it to the Pfingst case. That was in another court involving different people;

Q Mr. D'Onofrio, were you held in contemp for refusing

MR. GOULD: If your Honor please, I object to that. He doesn't have to finish that. That is completely improper as to form.

THE COURT: I quite agree, too, and unnecessarily so. I don't know why from your point of view you want to get into that.

Q Approximately how many Assistant U. S.Attorneys did you meet within this office when you appeared in this office between the time you returned from London and even up to today's date, Mr. D'Onofrio?

A About a dozen.

Q On various cases and matters?

A Various cases and matters other than this.

Q While you were a fugitive, Mr. D'Onofrio, were

you still cooperating and giving information to the FBI?

A Yes, sir.

Q Mr. D'Onofrio, Mr.Gould asked you certain questions with respect to Stoller Exhibit B, the Morvillo memorandum.

Do you recall that?

A Yes, sir.

Q When you met Mr. Brodsky in the Pentonville Prison what if anything did Mr. Brodsky tell you about the Morvillo memorandum inyour conversation that you had with Mr. Morvillo?

MR. GOULD: Just a minute. I think counsel has my copy. I am at quite a disadvantage.

Thank you very much.

May I have the question read? I am sorry.

THE COURT: Yes.

(Question read.)

MR. GOULD: I object to that. What difference doe it make?

THE COURT: I must say, I completely missed the point of such a question.

MR. SORKIN: Mr. Gould has created --

THE COURT: No, please.

MR. SORKIN: This is not the final agreement, your Honor.

MR. GOULD: If your Honor please --

THE COURT: That may all be, but that is not what I am asking you. I don't think it is helpful from your point of view, let alone anybody else's, including objecting counsel, to get into the details of the conversation with Mr.Brodsky and Mr. D'Onofrio over in Pentonville.

There is another way of doing this. If you claim that there is another agreement, you can get it identified and offer it. I don't think that means, though, we have to have conversations in the prison.

MR. GOULD: In view of counsel's gratuitous statement, I think it necessary --

THE COURT: I have asked that we all disregard this and it is very easy I think for us to disregard those gratuitous remarks.

MR. GOULD: Thank you, your Honor.

Q Mr. D'Onofrio, do you recall Mr. Gould showing you Stoller Exhibit B?

A Yes, sir.

Q And reading it to the jury?

A Yes, sir.

Q There were ten items that you asked for from Mr. Morvillo. Do you recall that?

A Yes, sir.

Q You asked for the return of your passport?

A Yes, sir.

Q Did you get it?

MR. GOULD: I object to this, your Honor. This is improper redirect.

THE COURT: What puzzles me is, whether it is proper or improper, I am so puzzled by why anybody wants to get into it in any event. You are going to have to come up to the side bar, Mr. Sorkin. I don't want to cut you off unfairly. I don't understand this from anybody's point of view.

(At the side bar.)

MR. SORKIN: Your Honor, Mr.Gould read these ten items to the jury. I feel that the Government has a right to redirect Mr. D'Onofrio on these ten items to show that each and every item that he asked for he never received so that the jury is not under the impression that this was the final understanding he reached with the Government.

I then, your Honor, intended to offer, which Mr. Gould offered on his cross, the Pentonville agreement which was the final agreement which he did not --

THE COURT: I thought the Pentonville agreement was already in evidence.

MR. SORKIN: I intend to read it, your Honor. Mr.

Gould read this. I think he unfairly left the impression that this was what Mr.D'Onofrio got and that is just not true.

MR. GOULD: I never did anything of the sort. I never suggested --

THE COURT: I didn't think you did either. If we are getting --

MR. GOULD: You would have slapped me right down if I ever did a thing like that. I never did that.

THE COURT: This is in evidence.

MR. GOULD: So is the other.

MR. SORKIN: Introduced by Stoller, your Honor.

MR. GOULD: I never said this was in the agreement. I went through this to show what was in this man's mind.

THE COURT: I agree with you. I don't think a suggestion has been put before the jury, let alone anybody trying to argue, that he got all these things. In fact, he is almost --

MR. GOULD: He said he did.

THE COURT: You are just pettyfogging, Mr. Sorkin. It is really a dreary bit of business.

MR. SORKIN: Mr. Gould --

THE COURT: I can't play games about the state of your mind or the state of the jury's mind. This is

nonsense. Nobody has told them he got allthese things. I am quite certain, if you will check the transcript, he has admitted he never got any of this. We are wasting our time. Let's get to the issues.

(In open court.)

BY MR. SORKIN:

Q Mr. D'Onofrio, you were shown Stoller Exhibit A, the agreement you entered into in the Pentonville Prison with Mr.Brodsky and Green. Do you recall that?

A Yes, sir.

Q Is this --

MR. GOULD: You have my copy.

(Pause.)

Q Do you recall that, Mr.D'Onofrio?

A Yes,sir.

MR. SORKIN: With your Honor's permission, I would like to read this agreement to the jury.

THE COURT: That is the agreement which is in evidence as Stoller Exhibit A?

MR. SORKIN: That is correct, your Honor.

(Mr. Sorkin read from Defendant Stoller Exhibit A in evidence to the jury.)

End 1B

BY MR. SORKIN:

Q Mr.D'Onofrio, you were asked a number of questions concerning your testimony before the grand jury in January of 1974, and November of 1973.

What if anything were you told before you went before the grand jury on each occasion?

MR. GOULD: I object to this, your Honor.

THE COURT: Yes. I must say I sustain that one. That would open the door to all kinds of marvelous things which have nothing to do with our case at all.

MR. SORKIN: May I be heard, your Honor?

THE COURT: No. I think we better not hear you in this context.

Let me ask you something, Mr.D'Onofrio. This agreement which this Government lawyer, Mr. Sorkin, just read to the jury and all of us, is that the sum and substance of agreements in writing that you had with the United States Attorney's office here? Did you have any other agreements?

THE WITNESS: I had no other agreements. I had an offer.

THE COURT: No,I am only talking about --

THE WITNESS: That is the whole agreement.

THE COURT: What you would consider final agreements with them.

A That is it.

THE COURT: That is it?

THE WITNESS: That is it.

THE COURT: All right.

THE WITNESS: No, there is one other thing. Prior to this trial I believe the United States Attorneys -- the sentencing Judge that will be sentencing me does not know me, has never had a trial with me. They said they would ask you to speak to him relative to personality, whatever I am, but they could not guarantee that you would. They would ask you --

THE COURT: They would ask me?

THE WITNESS: To speak to the sentencing Judge.

THE COURT: To speak --

THE WITNESS: To tell him --

THE COURT: Who is that Judge, do you know?

THE WITNESS: Judge Brieant.

THE COURT: The one mentioned in the agreement?

THE WITNESS: Yes, sir, because no Judge knows me here. You would be the only one that has even seen me on the stand.

THE COURT: That was an oral understanding?

THE WITNESS: Yes, and they said you may decline.

THE COURT: Fine. Is that all? There is no

other agreement that you know of?

THE WITNESS: No, sir.

THE COURT: Mr. Sorkin, is there anything else you want to do about this?

MR. SORKIN: Not on the agreement, your Honor.

THE COURT: All right. I would suggest, harkening to this last ruling, if there is something you want to ask him directly, fine, but let's not go through the way you are purporting to do it, what was asked before the grand jury. This man was before the grand jury quite frequently as I understand it.

MR. SORKIN: If I may lead, your Honor, I will.

THE COURT: Let's see what happens.

MR. GOULD: I object to this, your Honor.

THE COURT: Peace, wait and see what happens. Then you certainly may --

THE WITNESS: And I will hesitate before answering-

THE COURT: That will be splendid.

Q Mr.D'Onofrio, before you went before the grand jury on your various trips to the grand jury, were you told just to answer the questions and not to volunteer anything?

MR. GOULD: I object to that.

THE COURT: Sustained.

Q Mr.D'Onofrio, Mr. Gould showed you the letter that

you wrote to Mr.Frank, Defendant Stoller Exhibit G, and he read from it to the jury.

Do you recall that?

A Yes, sir, I do.

Q In that letter, Mr.D'Onofrio, which Mr. Gould read, you refer to Drummer Fleetwood.

Would you tell us, please, what Drummer is?

MR. GOULD: I object to this, your Honor.

THE COURT: Before I can pass on this one -- I have never seen these exhibits. I don't know what you are talking about, either one of them.

(Pause.)

THE COURT: I am going to allow that question subject to this limitation. I don't want any exposition of any facts, I just want him to tell us whether or not they were stock offerings or manipulations, but that's all.

Do you understand that?

MR. SORKIN: I do, your Honor.

Q Tell us, please, Mr. D'Onofrio, what is Drummer?

MR. GOULD: Subject to his Honor's --

A He is standing up objecting.

MR. GOULD: The question is not in conformity with your instructions --

THE COURT: Mr.D'Onofrio, was Drummer one of your

stock manipulations?

THE WITNESS: No, sir.

THE COURT: What was it generically speaking? What was it?

THE WITNESS: A secret Swiss bank account.

THE COURT: Another one of these bank accounts?

THE WITNESS: Of the defendants.

MR. GOULD: You see --

THE COURT: All right. What is the other name?

MR. SORKIN: Will he be permitted to say whose bank account, your Honor?

THE COURT: Just a moment, just a moment. One thing at a time. What is the other name?

MR. SORKIN: Fleetwood, your Honor.

THE COURT: Is Fleetwood another name of one of these bank accounts?

THE WITNESS: Yes, sir.

THE COURT: All right. Next question.

Q Mr. D'Onofrio, whose account was Drummer?

MR. GOULD: I object to that.

THE COURT: Overruled.

A Drummer was the Liechtenstein corporation account of Jerome Allen.

MR. GOULD: I move to strike it out, your Honor.

THE COURT: I would quite agree with that. I am sorry, I disagree upon reflection. I will let it stand.

Next question.

Q Who was Fleetwood?

A It was the secret coded account for Mr. Philip Stoller.

Q Liechtenstein Corporation?

A Yes, sir.

MR. GOULD: If your Honor please, I move to strike it out, especially because of the characterization. This is a conclusion on his part.

MR. SORKIN: Your Honor, if Mr. Gould allows me -- I am sorry, your Honor.

THE COURT: Now, Mr. Gould, that may well be, but I can't put words in witness' mouths. That we haven't quite come to, although we may some day, but I hope I am not here when we do. You have every right to so contend and have every right to ask him on recross.

Next question.

Q Mr. D'Onofrio, in your presence did you discuss Fleetwood with Mr. Stoller?.

THE COURT: Wait a minute.

Q Did Mr.Stoller discuss Fleetwood with you, Mr. D'Onofrio?

MR. GOULD: This is the vice in this whole series, your Honor.

THE COURT: I quite agree. This wasn't a door-opening operation, Mr. Sorkin.

MR. SORKIN: I am only concerned about Mr. Gould saying it is a conclusion. I think I am entitled to say it is not a conclusion based on a conversation.

THE COURT: Please, Mr. Sorkin, we are going to be litigating every little detail on that theory of yours.

I sustain that objection.

Q Mr. D'Onofrio, you were also asked questions with respect to your net worth, being somewhere between six to $10 million on paper, lettered stock.

Do you recall that?

A Yes, sir.

Q What is the value today of that lettered stock?

A It is negative.

MR. FELDSHUH: Objection.

MR. GOULD: I object to that, your Honor.

THE COURT: Sir?

MR. GOULD: I object to that, your Honor. What difference does it make what the value today is?

THE COURT: I am inclined to agree with you. What difference does it make? I don't understand what you are

trying to do here, Mr. Sorkin, once again.

MR. GOULD: If counsel will tell me what he is getting at, we can figure out a way to satisfy him.

THE COURT: I don't know of any issue in this case about the value of some lettered stock belonging to Mr. D'Onofrio or one of his family or whoever.

MR. GOULD: May I have a word with counsel and maybe we can straighten this out? I don't want to make these captious objections.

(Pause.)

MR. GOULD: If your Honor please, I have offered to stipulate with counsel that this man doesn't have one dollar of property in the world today, that he has a negative net worth of many hundreds of thousands of dollars, including approximately an obligation to the United States Government in the neighborhood of $750,000 for bac taxes, exclusive of penalties and interests.

If that is the purpose of the questions, I stipulate.

MR. SORKIN: All right. I will move on, your Honor.

Q Mr. D'Onofrio, you were asked by Mr. Feldshuh in his cross-examination about whether, to your knowledge, Mr. Frank got paid the $15,000. Do you recall that?

A Yes, sir.

Q Did you have any conversation with Mr. Allen relating solely to the $15,000?

MR. FELDSHUH: Objection, your Honor.

THE COURT: Conversation with Mr. Allen?

MR. SORKIN: Yes, your Honor, during the course of the conspiracy.

MR. FELDSHUH: I object to that, your Honor.

THE COURT: That's right. I don't consider this redirect.

MR. SORKIN: Your Honor --

THE COURT: If you thought this was so important, you should have gotten into it on direct and it isn't really just because it alludes to the 15,000. That doesn't mean it is proper on redirect. It is quite another twist to it now. I sympathize with counsel for Frank. I don't think that is permissible.

Q Mr. D'Onofrio, when you sent Stoller Exhibit G to Mr.Frank, I believe you testified there were certain enclosures with it. Tell us what enc-osures you sent to Mr.Frank.

MR. GOULD: Again before we have a formal objection, maybe I can help counsel and we can avoid objection.

(Pause.)

MR. SORKIN: May we have this marked as Government Exhibit 95.

xxx (Government Exhibit 95 was marked for identification.)

Q Mr. D'Onofrio, is this the enclosure that accompanied Stoller Exhibit G?

A It is I believe one of them.

Q Were there any --

THE COURT: Excuse me a minute.

When he said this, he meant Government Exhibit 95. Is that the number on it?

THE WITNESS: Yes. This is one of them.

THE COURT: Thank you.

MR. SORKIN: We offer this in evidence, your Honor.

MR. GOULD: No objection.

MR. FELDSHUH: No objection.

xxx (Government Exhibit 95 for identification was received in evidence.)

MR. SORKIN: Your Honor, may I just read certain portions of it?

THE COURT: Surely.

Q Mr. D'Onofrio, on top it says "Konto Casino."

A Casino was an account that was in the names I believe of Mr.Stoller, Mr. Allen and myself.

(Mr. Sorkin read fromGovernment Exhibit 95 in

evidence to the jury.)

Q This says A/$, Mr. D'Onofrio. What does that mean?

A That shows the currency.

Q To or from?

A To.

MR. GOULD: Would your Honor instruct the witness not to volunteer, please.

THE COURT: Let's do one thing at a time. Mr. Sorkin, in your own viewpoint, I don't understand why you say some of these things. You start out to read this. REad it. Why don't you do that?

(Mr. Sorkin read from Government Exhibit 95 in evidence to the jury.)

Q Mr. D'Onofrio, what is Vaduz?

A The capital of Liechtenstein.

THE COURT: We will take judicial notice Vaduz is the capital of Liechtenstein.

Q What were the other enclosures?

A My best recollection, there were some signature card enclosures bearing the signatures of Mr.Stoller, not Mr. Allen, another enclosure indicating some transfers to accounts Lance.

MR. SORKIN: I have no further questions, your Honor.

THE COURT: Mr. Gould, do you want to have some recross on this Stoller Exhibit G, etc.?

MR. GOULD: Would your Honor give me two seconds.

THE COURT: While you are thinking about that, I want to point out to you, Mr.Feldshuh and Mr. Sorkin, something about Frank's Exhibit G for identification, and if you and your client, sir, really wish to offer this, I would suggest you come up to the side bar with Mr. Sorkin and the reporter, because I have something to say to you about that subject if you are interested in it.

MR. FELDSHUH: I will take a look at the exhibit now.

THE COURT: The witness has been excused by the Court to go to the bathroom.

(At the side bar.)

THE COURT: You find me recall what I am talking about, you got it in your hand?

MR. FELDSHUH: Yes.

THE COURT: No one has ever bothered to tell the Judge where this came from, but I have my guesses. May I suggest that if you really feel this is seriously important to you and your client, there is one thing you and other learned counsel overlooked here, and that is this, I surmise that this came from some files which you acquired from

D'Onofrio or conversely that the Government acquired them and turned them over to you, right?

MR. FELDSHUH: Not from D'Onofrio, but the source is based upon the signature.

THE COURT: No, no.

MR. GOULD: Wait a minute.

THE COURT: Mr. Feldshuh, I didn't get into this to play games with you. If you were able to do the following, I would permit it, if you think this is big business, and I think you should decide that even though I think it is far from that.

If it comes from some files which would indicate that he would have authorized this kind of thing, I would be inclined to let it in, but you can't play games and keep that out of the Court's knowledge. You see what I am driving at?

MR. FELDSHUH: Right. I propose to offer it, sir.

MR. GOULD: You are missing his Honor's point.

The Court is concerned as I understand it -- this may have come from a source --

THE COURT: Feeney, for example.

MR. GOULD: If it came from anybody from --

THE COURT: In other words, it might be the sort of thing where he would have to admit he authorized it even

though he didn't sign it. You have got to establish that. You can't ask the Judge to do it.

MR. FELDSHUH: Yes, your Honor.

MR. GOULD: Why doesn't he ask Frank where it came from.

I think it is self-evident where it came from.

THE COURT: I know, but the record --

MR. GOULD: Here is where it came from.

THE COURT: Fine. I would agree to that, too.

MR. GOULD: He ought to make a representation to the Court that is where it came from.

THE COURT: Then I would have something to go on.

MR. GOULD: Then there is no question on it. It is clear.

THE COURT: That is why I raised the point. Are you advised in a constitutionally satisfactory matter? I leave it up to you.

MR. FELDSHUH: Thank you.

MR. GOULD: What he ought to do is simply m ake a representation outside the presence of the jury.

THE COURT: Fine.

(In open court.)

THE COURT: Now, Mr. Gould, are you able to tell us whether you want any cross --

MR. GOULD: Just very briefly, your Honor.

RECROSS-EXAMINATION

BY MR. GOULD:

Q Mr. D'Onofrio, after you entered into this contract or compact withStoller Exhibit A -- you know what that is, that is the Pentonville agreement?

A Yes, sir.

Q When you came back to the United States, correct?

A Yes, sir.

Q Do I understand, sir, that you have not been tried for any cases since you came back?

A I can't heard you, sir. You walked away.

Q I'm so sorry. Do I understand that you have not been tried in any cases at all?

A I have pleaded guilty to the cases.

Q Am I right, sir, that you have not spent one day in a prison or penitentiary since you came back --

MR. SORKIN: I object. That was gone over on cross extensively.

THE COURT: I agree. If something came up on redirect, fine --

MR. GOULD: I thought that did come up, your Honor.

THE COURT: No, this is something that has been established. There is no dispute about that. He hasn't

spent any time in jail, we know that.

MR. GOULD: Very good, your Honor.

End 2A

BY MR. GOULD:

Q Do I understand your testimony, sir, that other than this paper, Stoller's Exhibit A -- I think you said this -- you made no other agreements with the United States Government?

A I told your Honor about the one other agreement -- not agreement, about them talking to Judge Tyler to talk to my sentencing judge, but he would decline or could decline.

Q Have you got some kind of agreement between yourself and the Internal Revenue Service other than this?

A No.

Q Did you sign anything with the Internal Revenue Service?

A I have had to sign for the $1,500,000 I owe them.

Q You signed an agreement with them?

A Not an agreement, an assessment.

Q You consented to an assessment?

A For one year. They are going over the rest of the years now.

Q Didn't you sign something with respect to your 1973 income taxes?

A No, sir.

Q Did you file an income tax return for the year 1973?

A Yes, sir.

Q Did you show any income on it?

A Yes, sir.

Q And you signed no agreement with them other than this consent to assessment for a million how much?

A That one year was a million, five hundred thousand dollars. I have no agreements with the United States Government other than what is in there and other than the request to Judge Tyler.

Q And the consent to assessment for one year?

A That is not an agreement, that is part of their agreement that I must work with the Internal Revenue to assess me for taxes. I have signed no other agreements.

MR. GOULD: I have no further questions.

THE COURT: Do you have anything, Mr. Feldshuh?

MR. FELDSHUH: Yes, your Honor.

RECROSS EXAMINATION

BY MR. FELDSHUH:

Q Mr. D'Onofrio, Stoller's Exhibit G, would you look at it, please.

A Yes, sir.

Q On your redirect testimony you said that you enclosed three documents?

A Two or three documents in all.

Q Two or three?

A Yes, sir.

Q You are not sure?

A Of the amount.

Q Of the number?

A Yes, sir.

Q With regard to the two documents, you said there were signature cards, did you not?

A No, photostats of signature cards.

Q Photostats of signature cards.

You also enclosed Government's Exhibit 95 in evidence?

A Yes, sir.

Q You are not sure about any third document; is that right?

A I said I'm sure I enclosed two or three documents. One was signature cards, one was that, to my best recollection, and one was a document concerning Lance.

Q Did you anywhere in your letter refer to Lance?

A No, sir.

Q Is this the first time that you have told anyone that there was a third document?

A I told the United States Government that I had written a letter to Marty. I do not remember the contents

of the letter word for word, and I enclosed in it two or three documents concerning signature cards of the various defendants and I believe one concerning a transfer to Lance.

Q I see.

You are absolutely sure, though, of Government's Exhibit 95?

A What is 95?

Q That is the one I just showed you.

A No, sir, I could not even absolutely be sure of that, that that was one of the enclosures.

Q Didn't you just testify on recross this was one of the enclosures?

A Yes, but -- I says I think it is one of the enclosures. I couldn't absolutely be sure. There is no handwriting or anything that would indicate to me that that is one of the enclosures I made. If I had a notation on it that said RND or my initials, I could be sure. Under sworn testimony I couldn't be sure that is one of the enclosures.

Q You are also sure you enclosed signature cards because you referred to it in your letter?

A Excuse me?

Q Didn't you refer to,in your letter,of signature cards?

gwrf 5 D'Onofrio-recross

A No, it says I have. I didn't say I enclose. I have evidence of origiral documents. Am I allowed to do this?

THE COURT: Allowed to do what?

THE WITNESS: Read what I'm saying?

THE COURT: I wouldn't think so unless counsel wants you to.

Q I didn't say you said enclose signature cards, I said that the letter has the words in there,signature cards; is that right?

A Yes, sir.

Q Aren't you now sure that one of the enclosures was signature cards?

A I am not totally sure. I can't really be sure.

Q So that basically you are not sure of any of the enclosures?

A Excuse me?

MR. SORKIN: I didn t hear the last question.

Q Basically you are not sure of any of the enclosures, either Government's Exhibit 95 --

A Basically, I'm not sure of any of the enclosures, it is only a best recollection.

Q Thank you.

MR. FELDSHUH: Your Honor, shall I go to Frank's

Exhibit G? I have no further recross.

THE COURT: All right.

Before we do that, I'm going to have to have something in the record so that I can understand precisely what is being represented here.

MR. GOULD: I thought your Honor was going to ask counsel to make a representation as to the source --

THE COURT: That is what I'm saying gently just now.

MR. GOULD: I just tried to help.

THE COURT: I understand. That is what I thought I was saying again for the fourth time. You know what I'm concerned about here, gentlemen. Let's get to it.

MR. FELDSHUH: I would like to make a representation to your Honor that Defendant Frank's Exhibit G for identification came from certain files of one Mr. Alfred P. Herbert, a gentleman as to whom this witness testified was a partner with him in certain business affairs in Switzerland.

THE COURT: In other words, they were obtained by you or your client from Herbert's office in Zurich, right?

MR. FELDSHUH: That is right, sir.

THE COURT: All right.

MR. FELDSHUH: That is my representation.

THE COURT: You accept that representation, Mr. Gould and Mr. Sorkin on behalf of your clients?

MR. GOULD: I have no comment. I understand that to be the fact.

THE COURT: All right.

MR. SORKIN: I have no reason to doubt Mr. Feldshuh's representation.

THE COURT: All right.

Let's go ahead. Do you want to ask him some questions about that again?

BY MR. FELDSHUH:

Q Sir, I show you Defendant Frank's Exhibit G for identification --

MR. SORKIN: May I just ask one other question, your Honor? May we have the time when this was obtained?

MR. FELDSHUH: I can't give you that specifically. I will find out during the recess and I will tell it to you.

MR. GOULD: If it is important, maybe I can find out in a second when it was.

THE COURT: All right.

Go ahead, Mr. Feldshuh.

A This file came from --

THE COURT: These gentlemen represent --

A The man --

THE COURT: Wait a minute, wait a minute.

Let me repeat it for you, Mr. D'Onofrio.

Frank and his lawyer represent that this document or these documents known as Frank's Exhibit G for identification come from Mr. Herbert over in Zurich or his office. You see?

THE WITNESS: That is why I know nothing about it.

THE COURT: I don't ask you for comment. I'm just making an explanation.

THE WITNESS: I see.

THE COURT: Would you two gentlemen -- keep in mind, Mr. D'Onofrio, in addition to your hearing problem, Mr. Feldshuh has a hearing problem, too.

THE WITNESS: I didn't know that.

THE COURT: Right. So the two of you have got to coincide here.

THE WITNESS: That is why we sit close.

MR. FELDSHUH: That is one of the reasons.

THE COURT: All right.

THE WITNESS: Ask me the questions and I will try to do the best I can.

Q You heard my representation, did you not?

A That it came from Mr. Herbert's file in Zurich,

Switzerland and we don't know when.

Q Right. Looking at this document, Defendant Frank's Exhibit G for identification, wasn't there a Mr. Chaplin to whom you addressed a letter on or about May 3, 1970 with respect to Amitalia?

A I have no recollection of it, Mr. Feldshuh. I swear, I would love to help you because --

Q Don't love to help me.

A I just have no recollection. If I got the slightest recollection I would tell you.

Q Do you see here, sir, JMD, the whole initial being RMD JMD?

A Yes, sir.

Q Who is that?

A That is the initials of my sister, Joanne Marie Daily.

Q You did in this period of time dictate letters to her, did you not?

A Yes, sir.

Q Upon occasions did you authorize her to sign your name to any paper with regard to letters being sent out?

A Yes, she could sign my name if I were out of town or out of the country somewhere.

Q Right, sir.

With regard to this particular letter, even though you don't recall it, but now having seen those initials and having been informed that it came from the files of Mr. Herbert, can you tell his Honor and this jury, was there a prospectus of Amitalia Fund prepared and sent out to a printer for printing at that time?

MR. SORKIN: Your Honor, I must object. I think that is getting afield from the identification of this letter. Anyone could have typed Joanne Daily's initials on it. Now he is asking when the --

THE COURT: Just a moment. The later point is the only pertinent point, and I agree with you there.

Rephrase it, Mr. Feldshuh.

Q Now that you have seen all of this and Joanne M. Daily was your secretary at this particular time when you dictated letters and you authorized her to sign your name -- will you look at the signature, sir, and tell me, do you recognize her handwriting?

A No, sir.

Q You don't even recognize that?

A No, sir. Not if she is signing someone else's name --

Q She is signing Ramon N. D'Onofrio?

A I would never see it. Those letters would be

going out. I have no recollection.

Q You knew her handwriting, didn't you, sir? She was your secretary.

A I cannot vouch for her handwriting. I'm sorry, sir.

MR. FELDSHUH: Your Honor, predicated upon the fact that these papers came from the files of a partner of Mr. D'Onofrio, predicated upon the fact that he has identified the initials of JMD as being his secretary on the date that this exhibit bears, May 3, 1970 and further predicated upon the fact that he testified that I did dictate letters to her and that when he was not available letters were signed and sent out, I now offer Defendant's Exhibit G.

THE COURT: Let me ask you something, Mr. D'Onofrio. In looking at that exhibit such as it may be in its totality today, is there any doubt in your mind as to the authenticity of that copy?

THE WITNESS: Yes, sir.

THE COURT: There is?

THE WITNESS: Yes, sir.

THE COURT: You mean to say you doubt that such a letter ever went out --

THE WITNESS: You said authenticity?

THE COURT: That's right.

THE WITNESS: I have great reason to doubt any documents coming from Mr. Herbert because he has --

THE COURT: I don't want to get into Mr. Herbert. I'm just asking you, for whatever reason --

THE WITNESS: I have no recollection of it. That is the main reason.

THE COURT: All right. You made that clear quite a bit now.

What I'm trying to get at is this. Do you deny that a document like that went out in the regular course over there?

THE WITNESS: Do I deny it?

THE COURT: Yes.

THE WITNESS: I have no way of denying it or affirming it, your Honor. I'm being honest with you.

THE COURT: The subject matter was certainly something in that office of yours and Herbert's, wasn't it?

THE WITNESS: He wrote a lot of letters, too. Why don't they get Mr. Herbert to testify to it.

THE COURT: Forget that, he is not here, you are here. What I'm trying to get at is, is it your position in looking this all over that it probably never went out from your office?

THE WITNESS: I cannot say that your Honor --

THE COURT: Either way.

THE WITNESS: I can't answer you either way. I don't think so. I don't know.

THE COURT: All right.

Q On or about May 3, 1970 did you know a Mr. G. G. Chaplin?

A That is my big point. I don't know the name or the man. If it were a person that I would know the name or the man, maybe I would have a recollection. I never heard that name before, nor do I know the name. It may be a contact of Mr. Herbert's in which he signed my name and JMD.

THE COURT: All right.

A He didn't want to get involved maybe in fund activity over there.

Q Mr. D'Onofrio, would you just look at the last paragraph where you make a certain reference to a conversation with Mr. Chaplin.

Does that refresh your recollection, that conversation having occurred before May 3, 1970? Just look at it. Read it.

A I'm reading it.

Q Read that last paragraph, please.

A Okay. I have no recollection at all.

Q That last paragraph does make reference to something you told Mr. Chaplin, doesn't it?

MR. SORKIN: Your Honor, I object.

A I don't recall the man --

THE COURT: He has answered now. You reoffer this, Mr. Feldshuh?

MR. FELDSHUH: Yes, your Honor.

THE COURT: Does the Government accept or reject? What is your position?

MR. SORKIN: We object to its introduction into evidence.

THE COURT: All right. At this stage of the record I will be obliged to sustain that objection. If you want to go into it later, Mr. Feldshuh, you surely may.

MR. FELDSHUH: Thank you, sir.

THE COURT: Mr. D'Onofrio, I believe subject to correction from them, the lawyers are through.

MR. GOULD: I have one question, your Honor.

BY MR. GOULD:

Q Who is Pompeii?

A Pompeii is a Lichtenstein -- it may not be Lichtenstein. It is -- generically?

Q In --

A I don't know whether you are ready to show me a letter.

Q I want you to tell me.

A Pompeii is the name I know for being Muir Weissinger.

Q You knew Muir Weissinger, didn't you?

A Yes, sir.

Q And you knew him in 1970?

A Yes.

Q And you had business with him in 1970?

A It is possible; yes, sir.

Q Did you know him before 1970?

A Yes, sir.

Q Did you have business with him before 1970?

A Yes, sir.

Q In '69?

A Yes, sir.

Q In '68?

A Yes, sir.

Q In '67?

A No, sir.

MR. SORKIN: Your Honor, I object. I think this is improper recross.

THE COURT: Yes, I agree. This didn't come out --

MR. GOULD: I know it didn't. Very well, I'm finished, your Honor. Thank you.

THE COURT: All right.

Mr. D'Onofrio, you may be excused, sir.

MR. GOULD: Subject, your Honor, to recall.

THE COURT: I assume all of these matters are subject to recall, surely.

MR. GOULD: Thank you.

(Witness excused.)

(In open court; jury present.)

MR. SORKIN: May I proceed, your Honor?

THE COURT: Please do.

MR. SORKIN: Your Honor, counsel for defendant Stoller and counsel for defendant Frank and the Government have entered into a stipulation with respect to the next witness. The stipulation is as follows, that if Edmund S. Pervis were called as a witness, he would testify that during March of 1969 he was general connsel to the brokerage firm of Emanuel Deetjen & Company, and on or about March 30, 1969, he had received from Bank Hofmann government exhibits already in evidence 5 through 9 and 14 and 21 through 31.

THE COURT: Recite those again, would you.

MR. SORKIN: One last thing. Under cover letter, which is Government Exhibit 20 for identification, which we now offer in evidence --

THE COURT: Would you recite the exhibits again.

MR. SORKIN: I will, your Honor. The exhibits are Government exhibits in evidence 5, 6, 7, 8, 9 and 14, and 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31.

THE COURT: Thank you.

MR. [illegible]OLD: We stipulate so, your Honor.

THE COURT: So stipulated, Mr.Feldshuh?

MR. FELDSHUH: So stipulated, your Honor.

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(Government Exhibit 20 was received in evidence.)

MR. SORKIN: Your Honor, may I read 20 to the jury, please?

THE COURT: 20?

MR. SORKIN: Under cover letter of Exhibit 20 which we offered inevidence. The exhibits I identified came in on this letter.

MR. DERFNER: Can we have copies?

MR. SORKIN: Yes.

(Mr. Sorkin read from Government Exhibit 20 in evidence to the jury.)

MR. SORKIN: May I proceed, your Honor?

THE COURT: Surely.

MR. SORKIN: The Government calls Marilyn Herzfeld

M A R I L Y N H E R Z F E L D, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SORKIN:

MR. SORKIN: May I proceed, your Honor?

THE COURT: Please do.

Q Mrs. Herzfeld, keep your voice up so we can all hear you.

A All right.

Q Where do you reside?

A In Treasure Island, Florida.

Q Have you ever heard of a company called M & H Studios?

A Yes, I did.

Q Did you participate in the incorporation of that company?

A Yes, I did.

Q What does the "M" stand for?

A "M" stands for Moss.

Q Please keep your voice up.

A I am sorry. "M" stands for Moss.

Q And the "H"?

A Herzfeld.

Q When was the company incorporated?

A Incorporated in 1965.

Q What was the business purpose of M & H Studios?

A It was incorporated to do training programs, sales training programs.

Q Are you presently employed?

A I am self-employed.

Q In what capacity?

A I do educational training programs for companies.

Q Did there come a time when you met a man by the name of Ramon D'Onofrio?

A Yes, I did.

Q When did you first meet him?

A I think it was about sort of late spring, summer of 1968.

Q Where?

A He came up to the office with Mr. Moss.

Q Were you introduced to him by Mr. Moss?

A Yes, I was.

Q Did you have a conversation with Mr. D'Onofrio at that time?

A Yes.

Q Tell us, please, what you said, what Mr. D'Onofrio said and what if anything Mr. Moss said.

MR. GOULD: If your Honor please, at this moment I think it should be made clear this is subject to connection.

THE COURT: Yes. I take it you are offering this under the conspiracy count primarily?

MR. SORKIN: That is correct, your Honor.

THE COURT: I will instruct the jury this is being taken subject to connection, and I will make another ruling later to clarify that further, ladies and gentlemen.

Go ahead.

Q Go ahead, Mrs. Herzfeld, tell us what the conversation was.

A Well, Mr. D'Onofrio explained to us at that time the advantages of taking our small company public.

Q Go ahead.

A This was primarily the discussion, that he told us what advantages it would be. We were a small company. In order to do business or to get enough money to do business properly, he told us about taking it public.

Q Did you ever hear of a bank called Bank Hofmann?

A Yes, I did.

Q When did you first hear of Bank Hofmann?

A I think Mr. Moss had mentioned that Mr. D'Onofrio had certain business connections in -- overseas.

Q When was this?

A Oh, I guess probably about -- around the same time, a little later. During the summer probably of '68.

Q Do you know a gentleman bythe name of Joseph Pfingst?

A Yes, I do.

Q When did you first meet him and where?

A Around the summer of '68. He came up to the office with Mr. D'Onofrio.

Q Go ahead. Did you engage in conversation with him?

A Yes.

Q Go ahead. Tell us, please, what was said.

A Well, Mr. Pfingst asked us about the -- about the company and what we were doing, what our potential was. He was supposed to -- he was going to do the issue for us, write the prospectus for us.

Q Did there come a time when he performed services for the corporation?

A Just as far as the -- as taking us public, writing the prospectus for us.

Q Let me show you now what has previously been admitted into evidence as Government Exhibit 1.

Do you recall seeing that?

A Yes. That is the prospectus for Training With the Pros.

Q Do you know who prepared the prospectus?

A Mr. Pfingst.

Q Anyone else?

A As far as actual preparation, I don't know. Mr. Moss and myself provided information about the company.

Q I didn't hear you.

A Mr. Moss and myself provided the information he needed about the company.

Q Anybody else supply information to Mr. Pfingst?

A Mr. D'Onofrio was present at that time and made some remarks from time to time.

Q Let me show you what has previously been marked as Government Exhibit 4 in evidence.

Do you recall seeing that?

A Yes.

Q When did you first see that?

A I saw that when it came into the office, about the middle of October, toward the end of October, I guess it was.

Q That is the indication letter?

A The indication letter from Bank Hofmann, yes.

Q What if anything did you do when you saw that letter?

A Opened it up, showed it to Mr. Moss.

Q Did you have a conversation with Mr. Moss?

A Yes, I did, commented on the fact --

MR. GOULD: I object to conversations with Mr. Moss.

THE COURT: I am inclined to sustain that objection

Q Did you discuss that letter, Mrs. Herzfeld, with Mr. D'Onofrio at any time?

A Actually not discuss it with him. Mr. Moss was the one who really spoke to Mr. D'Onofrio about it, mentioned

MR. GOULD: I move to strike that out unless she was present.

MR. SORKIN: We are not offering this for the truth of the matt er, just that it was said.

THE COURT: I don't think I accept that. I will grant the application to strike the last answer.

However, Mr. Sorkin, I think you should help Miss Herzfeld. Put your question differently.

Q When was the last time you saw that latter, Mrs. Herzfeld?

A Well, Mr. Moss returned it to me after he was down to the SEC. He brought it back with him and I put it back in the file.

MR. SORKIN: Will counsel stipulate that Mr. Moss testified on May 27, 1969?

MR. FELDSHUH: I will so stipulate.

MR. GOULD: Wait a minute. Excuse me.

(Pause.)

MR. GOULD: If counsel only wants a stipulation as to the date of Moss' appearance before the Securities and Exchange Commission, I will accept that without hesitation, but I think we should be limited to that at this moment.

MR. SORKIN: Mr.Feldshuh.

MR. FELDSHUH: As far as I am concerned, I will

stipulate on May 27, 1969, Mr. Moss appeared at the offices of the Securities and Exchange Commission and there gave testimony under oath as to which a transcript has been duly made.

MR. GOULD: I will accept that stipulation.

MR. SORKIN: That is all I am asking for, your Honor.

Q Did there come a time when M & H Studios changed its name?

A Yes.

Q When was that?

A I think it probably was about -- about late August, September, around that time, '68.

Q By the way, what was the new name?

A Training With the Pros, Incorporated.

Q Prior to the name change did you have a conversation with Mr. D'Onofrio?

A Yes, we did.

Q Who is "we"?

A Mr. Moss and myself.

Q Tell us, please, what Mr. D'Onofrio said.

A Mr. D'Onofrio felt that the Training With the Pros name was a much better name since it indicated what the company actually indicated. M & H Studios had no meaning

for people.

Q Did he say anything else?

A His suggestion was we might use the name of Training With the Pros as the corporate name since the connection would be Training With the Pros and the Training With the Pros programming.

Q Did there come a time where you met a gentleman by the name of Philip Stoller?

A Yes, I did.

Q How many times did you meet Mr. Stoller?

A A couple of times. I think twice.

Q Maybe twice?

A About twice I think.

Q Can you identify Mr. Stoller today?

A I doubt it.

Q Why don't you look around the courtroom.

MR. GOULD: I will concede that the witness encountered Mr. Stoller at least twice in the year 1968.

MR. SORKIN: I will accept that.

Q When did you first meet Mr.Stoller?

A It was around the holidays, around Thanksgiving, Christmas holidays in 1968.

Q Where did you meet him?

A He came up to the office.

Q Was he with anyone?

A He was with another gentleman.

Q What was his name?

A Mr. Allen.

Q Do you know Mr. Allen's first name?

A Jerry, I think it is.

Q Prior to Mr.Stoller and Mr. Allen coming up to your office, did you have a conversation with Mr. D'Onofrio?

A Yes.

Q Tell us, please, what Mr. D'Onofrio said. Please keep your voice up.

A Sorry.

Q We are all having a little difficulty hearing you.

A I am sorry about that. Mr. D'Onofrio had mentioned to both Mr. Moss and myself that he knew of two gentlemen who would be interested in seeing the program and knowing more about the company because they knew of people who were interested in this type of an investment and they wanted to come up to see what we were doing, to make sure that we were a legitimate type firm and we had something to offer.

Q Did you have a conversation with either Mr. Stoller or Mr. Allen when they first came up during the holidays?

A No.

Q When was the next time you saw them?

A I think it was in January.

Q January '69?

A Yes. It was right around the holidays. I believe it was just after the holidays.

Q Did you engage them in conversation?

A Yes, I spoke to both of them.

Q What did you say to them and what did each of them say to you? Please identify what they said.

A Primarily the amenities, but Mr.Stoller had a list of some people. He asked me to send a prospectus and subscription for him, that they were interested in learning about it and possibly in putting in a subscription for some stock.

Q At this time do you recall the names Mr. Stoller gave to you?

A There are a couple of them. I know Mr. Allen's name came up once and Mr. Arden.

Q Mr.Arden?

A Mr.Arden.

Q Go ahead.

A Offhand -- wait a minute. There was a Janice Hickock.

Q Anyone else that you recall at this time?

A I think there was just -- Striziver and Abramson.

Q Do you recall any others?

A Not offhand, none that I would associate.

Q Let me show you now, Miss Herzfeld, what has previously been marked as Government Exhibits A through P, and look at the names there and see if they refresh your recollection as to the names Mr.Stoller gave you and/or Mr. D'Onofrio or Mr. Allen, as the case may be?

A Hickock and Striziver, Ruth Recca I think might have been one, I don't really remember that well.

MR. GOULD: I think we can save some time. There is no issue on this, that certain of these names came from Stoller. If counsel tells me what he wants by way of stipulation, we don't have to torture this lady .

MR. SORKIN: I don't know if there is no issue, your Honor.

MR. GOULD: I will tell him there is no issue.

THE COURT: I think the real point is, what is it you want to ask Miss Herzfeld about this? We have the stock certificates. There can't be much doubt about that.

MR. SORKIN: If Mr.Gould wishes to stipulate that Mr.Stoller gave to Mrs. Herzfeld the following names which I will read --

MR. GOULD: Show me what you want and I think we

can save some time.

MR. SORKIN: Surely.

MR. GOULD: If your Honor please, I am prepared to stipulate that with respect to the following persons, Herman Tolansky, who got 1000 shares, Mildred Stoller, 1000 shares, William Brief, 1000 shares, Delore Abramson, 1000 shares, and Rube Pollin, 1000 shares.

With respect to each one of those persons whom I have enumerated, their interest in the subject of Training With the Pros was as a result of conversations with Mr. Stoller, that each one of those people communicated with Training With the Pros or with the witness or with somebody else there, and that each one of them subscribed for, purchased and obtained the 1000 shares as a result of the fact that Stoller, the defendant Stoller, had directed their attention to the matter.

THE COURT: All right.

MR. GOULD: All right.

MR. SORKIN: That is fine.

Q Did there come a time when you received a letter in the spring, approximately the spring of 1969? Let me rephrase the question.

A I don't understand the question.

Q Did there come a time when you learned that the

SEC had done an investigations into the training activity of Training With the Pros?

A Yes.

Q How did you first learn that? Don't tell us the conversation, just tell us how you learned of it.

A I believe Mr. Rich called Mr. Moss to tell him --

Q Mr. --

A Mr. Rich, at the SEC. I think he was head of it at that time. He called Mr. Moss to say they had received a crank letter and they were sending us a copy, but would not divulge the source of it.

Q Did there come a time when -- withdrawn.

After Mr. Moss testified at the SEC, which we stipulated was May 27, 1969, did you have a conversation with Mr. D'Onofrio?

A Mr. Moss spoke to Mr. D'Onofrio over the phone.

Q Did you overhear the conversation?

A I overheard his portion, yes.

Q Whose portion?

A Mr. Moss.

Q Tell us, please, the next time you spoke to Mr. D'Onofrio.

A It was out at Mr.D'Onofrio's home on the weekend.

Q When was that?

A It was the Memorial Day weekend, right after he had testified at the SEC.

Q Tellus, please, what Mr. D'Onofrio said, what you said and what Mr. Moss said?

A The general conversation was about what the problem -- what kind of problems we would have with the SEC and the indication seemed to be that Mr. Moss was badly represented there.

Q By whom?

A By Mr.Barton, who was then counsel.

Q Go ahead.

A And also that what the SEC seemed to feel was that in filing our Regulation A we did not make full disclosure either advertently or inadvertently.

Q What did Mr. D'Onofrio say?

A Mr. D'Onofrio said that if we got in touch with -- if we got in touch with Mr.Frank, that at least we could talk to him and find out what he thought of the situation.

Q Had you heard Mr.Frank's name prior to this meeting?

A The time that Mr. Moss spoke to Mr. D'Onofrio -- right after his hearing at the SEC, Mr.D'Onofrio said --

MR. GOULD: I think this is probably a one-sided conversation.

THE COURT: Yes. In other words, Mrs. Herzfeld,

what you are telling us is you heard some mention of the name Frank from Mr. Moss on this one-sided phone conversation, is that it?

THE WITNESS: No, this was after that. Mr. D'Onofrio returned the call. He said he was going to get -- he said that he would get us the name of a good SEC lawyer because he felt we needed that type of representation.

MR. GOULD: No objection.

THE COURT: So this was a call that you took?

THE WITNESS: The first call Mr. Moss -- Mr. Moss made the call to Mr. D'Onofrio, told him the problem, told him he was very dissatisfied --

THE COURT: Never mind all that. What I am interested in is when you first heard the name Frank.

THE WITNESS: It was after that, when Mr. Moss hung up on Mr. D'Onofrio on the second call, that Mr. D'Onofrio called back with the name of Mr.Frank

THE COURT: Did he talk to you and give you the name?

THE WITNESS: No, he gave it to Mr. Moss and Mr. Moss told me.

THE COURT: I see. All right.

Can't you proceed? If you have to lead to get around these problems, I think I might tolerate it.

MR. SORKIN: Thank you, your Honor.

Q Did there come a time when you turned certain records over to Mr. Frank of Training With the Pros?

A Yes.

Q When was that?

A I think it was probably some time in June or July. I am not sure when .

Q I didn't hear you.

A I think it was some time in June or July.

Q Of what year?

A Of 1969.

Q Do you know a gentleman by the name of Joseph Bonavia?

A I met him once.

Q When?

A It was some time in early '69. I am not sure when.

Q Where?

A He came up to the office.

Q Was he with anyone?

A Mr. D'Onofrio, as I remember.

Q Do you know a gentleman by the name of Muir Weissinger?

A Yes.

Q When was the first time you met him?

A Oh, somewhere around the same period of time,

maybe a little bit earlier or later. I couldn't be exactly sure, but around that period of time.

Q Where did you meet him?

A He also came up to the office.

Q Was he with anyone?

A With Mr. D'Onofrio.

Q By the way, where was your office located, Training With the Pros?

A At 41 West 86th Street.

Q New York City?

A New York City.

MR. SORKIN: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. GOULD:

Q Is it Miss or Mrs?

A Miss.

Q Miss Herzfeld, in this company -- I am going to call it Training With the Pros to avoid confusion. In this company which we will call Training with the Pros, you and Mr. Moss were the two principal people connected with it, right?

A Yes, we were.

Q Then along came Mr. D'Onofrio and he suggested making it public, is that correct?

A Yes.

Q Up until that time you had no interest in going public?

A Never thought about it.

Q It was D'Onofrio's idea that it would be a good thing?

A It was a suggestion if we were interested.

Q It sounded right and you encouraged him to go forward, in substance, isn't that right?

A Yes.

Q And then after you had a number of conversations with him, he suggested a lawyer who could help you do this job?

A We had asked him if he knew of somebody.

Q And he came up with Mr. Pfingst?

A That's right.

Q And then you paid Mr. Pfingst a retainer, correct?

A I don't remember what the arrangement was, but he was paid for doing the job, yes.

Q And you made some kind of arrangement with D'Onofrio that he was to get paid for working on the deal?

A He was actually -- actually Mr. Moss was going to use him or was using him at that time -- I don't remember which -- as financial advisor.

Q And he got compensated for that?

A Yes.

Q In addition to compensation in cash he got some of the stock?

MR. SORKIN: I don't think there is any evidence he was compensated in cash.

THE COURT: Ask the question directly.

Q Was some of his compensation in cash?

A No, it was -- we didn't have cash.

Q So you gave him stock?

A Yes.

Q Do you remember how much stock you gave him?

A Offhand, I think it was 50,000 shares. I am not sure.

Q How much did you have?

A 100,000.

Q And Moss?

A 100,000.

Q So you now had a partner in the business, Mr. D'Onofrio, right?

A I guess you would say that.

Q You had 20 per cent of the company?

A There were others involved.

Q There were?

A Mr.Moss' son also had 100,000 shares.

Q So he had somewhere between --

A But -- he did have shares of stock, yes.

Q After he comes into this -- he was in your office a great deal, wasn't he, during this period, in late 1968 --

A Off and on.

Q Then there comes a time when you -- I suppose you learned for the first time that there was Regulation A offering, right?

A Yes.

Q This was your first introduction to it, wasn't it?

A Yes.

Q And you learned about it from Mr. D'Onofrio?

A Yes.

Q He explained to you that there was a relatively inexpensive, in substance -- if I am wrong, you correct me -- there was a relatively inexpensive abbreviated form of registration statement called a Reg. A offering?

A Yes.

Q That is right. It cost less and it was quicker and it had other advantages, right?

A Yes.

Q And that is what he and Pfingst were going to do for you, get one of those through the SEC?

A That's right.

Q That is about the sum and substance?

A That's right.

Q Then after he and Pfingst had worked up the materials they gave you certain papers to sign, you and Mr. Moss, isn't that right?

A There were certain things that -- yes.

Q That had to be filed?

A For filing.

Q For filing with the Securities and Exchange Commission?

A Yes.

Q And you asked Mr. Pfingst if they were all right, correct?

A Mr. Moss did most of that as president.

Q But you signed too, didn't you?

A Yes.

Q And you wanted to be sure that they were good decent honest documents, that they told the truth?

A Naturally.

Q Did you go over to make sure they were decent, honest, truthful documents?

A They seemed to be to us.

MR. SORKIN: Who is "us"?

A Mr. Moss and myself.

Q And to Mr. Pfingst, right? He didn't say there was anything wrong with t hem, did he?

A No.

Q As far as you know, they were in all respects perfectly decent, honest documents, were they not?

A That's right.

Q Describing truthfullythe activities of the legitimat business?

A That's right.

Q Then I understand you were advised that you could offer the securties for sale?

A Yes.

Q In other words, you had an effective Regulation A offering?

A Yes.

Q Isn't that the word that was used at the time?

A I really don't remember.

Q You knew you now had the right to sell the securities?

A I knew we were able to do it.

Q It was at this time, was it not, that for the first time you heard the name of Mr.Stoller?

MR. SORKIN: Objection, your Honor.

MR. GOULD: Why?

MR. SORKIN: We will stipulate the effective date was February 4. I think she testified she heard of Mr.Stoller in November and December, the holidays.

MR. GOULD: I really thought I was cross-examining the witness.

THE COURT: You may be right, but again that has nothing to do with the question. The question is perfectly proper.

Go ahead.

Q It was at the stage where you knew that you had securities that you could legitimately offer that you encountered Mr. Stoller, isn't that the fact?

A Yes.

Q And you encountered Mr. Allen?

A That's right.

Q And Mr. Bonavia?

A Mr. Bonavia, I couldn't say. I think that was later.

Q And Mr. Weissinger was a little later?

A That was later on, yes.

Q All right. Let's stay with Stoller and Allen. They werepeople who came up to your office and they sat down with you and Mr. Moss and Mr. D'Onofrio, correct?

A They sat down with Mr. Moss and Mr. D'Onofrio.

Q Did you hear what went on?

A No, I was outside of the office.

Q Did you ever talk with them?

A Just generally, not to any great degree.

Q But from your general conversation with them would you not agree that what they were interested in was learning what the company was all about?

A This was the indication, yes.

Q That's right. They were trying to find out what you had and what you did, right?

A That's right.

Q And what the prospects were?

A Yes.

Q And whether it was a good investment or not?

A Yes.

Q That's what it was -- what you were talking about at the time as far as you know?

A Yes.

THE COURT: Excuse me. I am a little confused here. I thought you said you didn't do any talking with these two men, Allen and Stoller, except generally.

THE WITNESS: I didn't.

THE COURT: I don't quite follow. You didn't

have any conversation --

THE WITNESS: Maybe I am assuming something. What Mr. Moss had told me about his conversation --

THE COURT: No, that is not the question.

You didn't talk to this man Stoller or this man Allen about Training With the Pros --

THE WITNESS: Not about the company, no.

THE COURT: I see. You are telling us now what Moss told you?

THE WITNESS: Yes. I misinterpreted it then.

MR. GOULD: I misunderstood, your Honor.

THE WITNESS: I didn't really. It was an introduction. It was the amenities, so to speak. Actually as far as conversation at that time, no, I was in and out of the office. I was not in the meeting.

Q But you did discuss with Mr. Moss what they were interested in?

A Yes, after they left he told me what had gone on in the meeting.

Q And he told you that they were interested in learning about the company?

A Yes.

MR. SORKIN: I object, your Honor --

THE COURT: It is a little late, isn't it? I agree

with you, though. I will sustain that.

By the way, tell me, where is Mr. Moss today, to your knowledge?

THE WITNESS: Mr. Moss is deceased.

THE COURT: When did he die?

THE WITNESS: July.

THE COURT: Of what year?

THE WITNESS: Of this year.

THE COURT: Of this year?

THE WITNESS: That's right.

THE COURT: WAs he living in New York, if you know, at the time of his demise?

THE WITNESS: No, he was living down in Florida.

THE COURT: He was down in Florida, too?

THE WITNESS: That's right.

THE COURT: I see. Thank you.

THE WITNESS: You're welcome.

THE COURT: Go ahead.

Q Stoller and Allen, did they come up with D'Onofrio?

A Yes, they did.

Q Then there were D'Onofrio, Stoller, Moss and Allen, is that right?

A That's right.

Q They only came up once or twice, is that what I

heard you say, that you know about?

A That's right. I saw them, I think it was just twice.

Q You knew what Training With the Pros was, didn't you?

A Yes.

Q It was a perfectly legitimate business, was it not?

A Yes, it was.

Q You were doing your best to run an honest business?

A Yes, we were.

Q And you needed money to do it?

A That's right.

Q And it was D'Onofrio who suggested to you that you might get the money, raise the money, by going public, isn't that correct?

A That's right.

Q And indeed you did get the money that way, didn't you?

A We did.

Q You say it was later that you encountered a fellow named Bonavia. How much after your company made this public offering did you meet Mr. Bonavia?

A Let's see. It had to be about three or four months afterwards. It was something like that, as I remember.

Q Did Bonavia talk with you?

A No.

Q Only with Mr. Moss?

A That's right.

Q You don't know what they discussed?

A I have no idea. They just introduced me to him and that's all I knew.

Q How about this other fellow, Weissinger?

A At the time I just was introduced and that was it.

Q Did you yourself have a direct conversation with Mr.Weissinger?

A Not at that time I didn't.

Q YOu don't know what he was doing?

A No.

Q Going back for a minute to the activities of Training With the Pros, did you have some business with McGraw Hill?

A Yes, we did.

Q You were trying to make arrangements with them --

A We had a contract.

Q You had a contract?

A Yes.

Q About this time you were making a movie with Percy Sutton as part of your work? You look as if I am wrong

about it.

A I remember they were trying to do something with him,but I don't remember them making -- I think they were talking to him about that. The program was designed to work in the ghetto areas.

MR. GOULD: Would you be good enough to mark these. I will mark these as a single exhibit, your Honor. Then I will indicate the number of sheets on it.

xxx (Defendant Stoller Exhibit M was marked for identification.)

End 3A

Q Miss Herzfeld, would you be good enough to look at each one of the seven pages of this paper, which has now been marked as Stoller Exhibit M. Take a look at them. Each one has your handwriting on it, doesn't it?

A Yes.

Q In fact, I'm right that you wrote out each one of those, either wrote it out in longhand or typed it --

A Yes.

Q In each case you typed it?

A That is right.

Q These papers represent, do they not, receipts which you gave to the six stockholders whose certificates Mr. Sorkin showed you before?

A Right.

MR. SORKIN: I think there were five.

MR. GOULD: Let me see. Let's see if we can get it corrected.

MR. SORKIN: Sure.

Q You gave a receipt from Mildred Stoller?

MR. SORKIN: That is right.

MR. GOULD: All right. I was in error.

Q It is those six plus one other --

MR. SORKIN: Those five plus one other.

Q Those five plus one other which we will identify.

The first page is your handwritten receipt to somebody named Mildred Stoller for $7,000 in payment for 1,000 shares of Training With The Pros?

A Right.

Q You gave her the certificates, she gave you the money?

A Right.

Q Do you remember how you gave this to her?

You look a little perplexed.

Didn't she come in the office and pick up the certificate and give you a check?

A I really don't remember.

Q That is what could have happened?

A Certainly.

MR. SORKIN: Objection to what could have happened, your Honor.

THE COURT: I quite agree. You just don't remember.

THE WITNESS: I don't remember as to how I gave those. I didn't even remember about giving the certificates until -- about giving the receipts until I saw them.

Q The next one is Herman Tolansky; you got another $7,000 and he got the 1,000 shares of stock?

A Yes.

Q The certificate?

A Yes.

Q Your signature?

A Yes.

Q Then we got one from Rube Poilin; this is all your handwriting, the next page?

A Yes.

Q $7,000 in payment for 1,000 shares, same thing?

A Yes.

Q And then somebody named Sarah Striziver, she also gave you 7,000 bucks and you gave her a certificate for 1,000 shares?

A Yes.

Q Right?

A Yes.

Q Joseph Arden, same thing, your handwriting?

A Yes.

Q And Dolores Abramson, same thing?

A Yes.

Q All right.

The last one, it says here Janice Hickok, 9,000 --

A No, $7,000.

Q $7,000 in payment for 1,000 shares, you wrote

that one, too?

A Yes.

MR. GOULD: I will offer all of them except the last one.

MR. SORKIN: May I have a short voir dire, your Honor, on this for just a moment?

THE COURT: I don't know what the problem is. If you want it, surely.

VOIR DIRE EXAMINATION

BY MR. SORKIN:

Q Mr. Gould asked you if you gave these to the various people and gave them a certificate.

Did you hand them the certificate or were the certificates --

A No, the certificates --

MR. GOULD: I object. That is not voir dire.

THE COURT: I agree. You can get into that later.

MR. SORKIN: No objection then.

THE COURT: There is no doubt about the documents. She has identified her handwriting.

MR. GOULD: I don't have to read these. I think the jury has the substance of them.

THE COURT: I want to ask one question.

You said something as you were walking away

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about excluding one of these.

MR. GOULD: Yes. Maybe we can get that one straightened out. I have to ask counsel to stipulate on something --

THE COURT: Fine. One thing at a time. We will receive Defendant's Exhibit M, Stoller Exhibit M as it was originally marked with one exception, and that is that they were received in the name of Hickok, correct?

MR. GOULD: Yes.

MR. SORKIN: We will stipulate to Hickok, too, your Honor.

MR. GOULD: And who she is?

MR. SORKIN: Yes.

MR. GOULD: I will include in the offer, your Honor, this last one, which shows the name of Janice Hickok and counsel will agree with me that Janice Hickok is Jerome Allen's wife's maiden name.

MR. SORKIN: Yes, your Honor. May we also get a stipulation since we are all on that that Rube Pollin is Mr. Stoller's mother-in-law --

MR. GOULD: I think you got it in already.

MR. SORKIN: I don't recall getting it in already.

MR. GOULD: I'm only talking about Hickok now.

THE COURT: Yes.

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(Defendant Stoller Exhibit M for identification received in evidence.)

xx

MR. GOULD: I have no further questions.

THE COURT: Any questions, Mr. Feldshuh?

MR. FELDSHUH: Your Honor, I wonder at this time if we can have an early luncheon recess so I can organize my cross?

THE COURT: Sorry, sir. I didn't know any more than you do. If we did this, we would never finish any trial.

Go ahead.

CROSS EXAMINATION

BY MR. FELDSHUH:

Q Miss Herzfeld, you testified with respect to Government's Exhibit 4 in evidence that it is a letter of indication.

You remember that, ma'am?

A Yes.

Q And that letter of indication --

MR. FELDSHUH: May I have it, please?

MR. SORKIN: Yes, sir.

Q -- dated October 17, 1968?

A Yes.

Q Do you recall, Miss Herzfeld, a meeting with the

Securities and Exchange Commission and its representatives prior to February 4, 1969?

A A meeting that I had with them?

Q That anybody -- I will withdraw that.

Wasn't there a meeting prior to February 4, 1969 between the representatives of the Securities and Exchange Commission and Mr. Moss?

A Mr. Moss had the due diligence meeting with Mr. Rich, I know, but I was not there.

Q Did you give any papers to Mr. Moss to take down to that due diligence meeting?

A No, not that I remember at all.

Q Did you give him -- I will see if I can refresh your recollection.

Would you look at Government's Exhibit 4 in evidence, and I ask you, ma'am, now that you have looked at it whether you gave that letter to Mr. Moss to take with him to the due diligence meeting held prior to February 4, 1969?

A I don't remember giving him this at that time.

Q Did you give him any letters or indication prior to that meeting or about that time?

A No.

Q When, if at all, did you give Mr. Moss this

Government's Exhibit 4 to take down to the SEC?

A I believe it was at the time that they called him down in May.

Q That was at the time that Mr. Barton represented him?

A That is right. He asked for a -- he asked for that, I believe, and the crank letter. I think I pulled out others. That was not the only one. I think there were some others, indication letters, that I gave him at that time of people who had written in, who had heard about the company and were interested.

Q And you gave him all of that material?

A I gave him I guess about -- it must have been about 10 or 12 letters and also the crank letter.

Q When Mr. Moss came back from that meeting with the SEC in May of 1969, did he bring Government's Exhibit 4 back with him?

A Yes.

Q Did he turn Government's Exhibit 4 over to you?

A Yes. He gave me all of them.

Q With regard to Government's Exhibit 4, did you put that in the files of the company?

A Yes.

Q Did you continue to retain possession of the files

of the company after May of 1969?

A Yes.

Q Did there come a time when the office of the company moved from New York City to Florida?

A Yes.

Q Was that in 1969?

A No, it was the end of 1970.

Q End of 1970?

A November, December of 1970.

Q Upon the occasion of that move did you take the files with you?

A Yes.

Q With regard to your move down there and with respect to the files, I ask you, ma'am, did you have occasion to see Government's Exhibit 4 in evidence, the original of Government's Exhibit 4?

A I had the file with me, the file containing that with me, yes, because I made sure I had everything in my office set to go separately.

Q So that the original of Government's Exhibit 4 in evidence was in the file that you took down to Florida in 1971?

A To my knowledge, it was.

Q Miss Herzfeld, you testified on your direct

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examination that Mr. Barton represented the company with respect to the SEC matters in 1969.

Do you remember that, ma'am?

A Not to SEC matters. He was a general counsel.

Q General counsel for the company?

A That's right.

Q Did he handle at any particular time the offering as counsel to the company?

A Not to my knowledge unless he assisted Mr. Pfingst inasmuch as he worked in his organization.

Q Didn't there come a point in time when Mr. Pfingst retired as counsel or withdraw as counsel for the company and Mr. Barton took over?

A Yes.

Q Do you remember that time? Wasn't that the end of 1968 or the beginning of '69?

A It was after the offering had gone through. It was after everything was completed.

Q When you say "Everything was completed," was that when the offering became effective, on February 4, 1969?

A It was in that period of time, but it had been accepted and all the work was done, everything had been filed. So Mr. Barton, to my knowledge, did not actually

work on it unless he worked with Mr. Pfingst as part of his office staff.

Q I see.

On and after February 4, 1969, while the offering was being sold to the public, was Mr. Barton house counsel to the company?

A Yes.

Q Is that right?

A Yes.

Q He continued as counsel to the company as far as you know thereafter, did he not?

A Until -- until this particular occasion of the SEC interrogation of Mr. Moss.

Q On or about May 27, 1969?

A Yes, as of the end of May.

Q It was after that interrogation that Mr. Moss came back to the office and gave you the original of this letter of indication, Government's Exhibit 4?

A Right.

Q Is that right?

A Right.

Q All right.

Did you have occasion, ma'am, to meet with Mr. Frank after May 27, 1969?

A Yes.

Q Had you met Mr. Frank before that time?

A No.

Q When did you meet Mr. Frank for the first time?

A When Mr. Moss, Mr. Barton and myself went up to his office for a meeting the following week.

Q When you say "the following week" you mean the early part of June --

A It was the early part of June, that's right.

Q 19 --

A 1969.

Q 1969?

A Yes.

Q Who else if anyone was present at that time?

A At that time we were the only ones.

Q I'm sorry?

A Just the three of us.

Q Just the three of you?

A Yes.

Q What was the subject matter of your discussion with Mr. Frank at that time?

A Mr. Moss' meeting with the SEC, what went on there and the problems that -- what problems he thought we might have because of the type of questioning Mr. Moss had been

put under.

Q That questioning had been going on when Mr. Barton was present as Mr. Moss' counsel?

A That's right.

Q On May 27th?

A That's right.

Q To your knowledge, do you know if this was the first time that Mr. Moss had met Mr. Frank?

A Yes, it was, to my knowledge.

Q To your knowledge, was it the first time that Mr. Barton met Mr. Frank?

A Yes.

Q As a consequence of that meeting, do you know whether Mr. Frank was retained by Training With The Pros, to represent the company in the SEC investigation?

A Yes, Mr. Moss said that he would -- he decided he would retain him because we needed somebody.

Q On May 29, 1969 you were still -- what office did you hold --

A Secretary-treasurer.

Q I see.

I show you this paper, ma'am, and I ask you, do you recognize the signature on it?

A Yes, I do.

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MR. SORKIN: Can we have a number on it?

MR. FELDSHUH: I'm going to put one on it.

THE WITNESS: Yes, I do.

MR. FELDSHUH: Would you kindly mark this Defendant Frank's next letter for identification.

(Defendant Frank's Exhibit H marked for identification.)

zz

Q Miss Herzfeld, this Defendant Frank's Exhibit H for identification is a letter on the stationery of Training With The Pros, is that right?

A That's right, yes, sir.

MR. FELDSHUH: I will over it.

MR. SORKIN: May I see it?

(Pause.)

MR. SORKIN: I don't think the proper foundation has been laid, but we don't have any objection.

MR. GOULD: Could I see what it is?

MR. FELDSHUH: May I hand a copy of this up to your Honor for your Honor's ruling?

THE COURT: I didn't understand there was any objection.

MR. SORKIN: I don't object, your Honor.

MR. GOULD: I thought I hard you say there was no foundation.

THE COURT: He made the comment, but he didn't object.

H will be received without any further ceremony.

(Defendant Frank's Exhibit H for identification received in evidence.)

xx

MR. FELDSHUH: With your Honor's permission, I would like to read this to the jury.

THE COURT: Surely.

(Mr. Feldshuh read from Defendant Frank's Exhibit H in evidence to the jury.)

MR. SORKIN: May we just have Miss Herzfeld identify this?

THE WITNESS: That is Mr. Moss' signature, yes.

MR. SORKIN: Thank you.

MR. FELDSHUH: Would your Honor want a Xerox copy of this exhibit for your own file?

THE COURT: No thank you, sir.

Q You testified a moment ago, Miss Herzfeld, that you had met Mr. Frank shortly after the hearing on May 27, 1969?

A That is right.

Q Do you recall that?

A That is right.

Q And then when was the next time you met Mr. Frank,

if you recall?

A Three weeks later, about three weeks later; three or four weeks later at another meeting.

Q Sometime the end of June, the beginning of July?

A That's right.

Q 1969?

A Right.

Q Where did you have that meeting?

A We had that at Mr. Frank's office, conference room.

Q Was that in connection with Training With The Pros, in a matter then pending before the Securities and Exchange Commission?

A Yes, it was.

MR. SORKIN: Who is "we"? May we find out who was there?

MR. FELDSHUH: I was just going to ask that.

MR. SORKIN: I'm sorry.

Q Would you tell us who was present at that meeting?

A Mr. Moss, myself, Mr. Arthur Litt, who was then our corporate attorney, and later on Mr. D'Onofrio came in.

Q When you say, "later on," how much later on did Mr. D'Onofrio come in?

A About three-quarters of an hour, an hour later.

Q With regard to his coming in at that time, had the meeting already started and gone forward?

A Yes.

Q And the matters then pending with respect to the SEC were being discussed?

A Yes, we were already discussing it.

Q Mr. D'Onofrio came into the room; did he not?

A Yes.

Q At that time was Mr. D'Onofrio introduced to Mr. Frank?

A He introduced himself.

Q What did Mr. D'Onofrio say to Mr. Frank in that meeting at the end of June or the beginning of July 1969? When you say he introduced himself, what did you hear Mr. D'Onofrio say?

A He says, "Hello, I'm Ray D'Onofrio."

Q He said that to Mr. Frank?

A Yes.

Q What did Mr. Frank say, if anything, to him, when Mr. D'Onofrio said that?

A "Glad to meet you."

Q And thereupon Mr. D'Onofrio sat down?

A Yes.

Q And the meeting continued?

A Yes.

Q I ask you, in the course of that meeting was there any talk about Government's Exhibit 4 in evidence, now the letter of indication, Training With The Pros from Bank Hofmann?

A I don't recall that there was any more talk about that than anything else. We talked about letters of indication as letters of indication, not this one from Bank Hofmann or that one from somebody else. They were all letters we had received.

Q It is the fact that the original of this letter was still in your files in the end of June, beginning of July 1969?

A Yes.

Q And continued in your files until 1971?

A I would assume so. I didn't have any occasion to take it out.

Q I see.

In that meeting at the end of June or the beginning of July 1969, did you hear in words or substance anything about the destruction of Government's Exhibit 4 in evidence?

A No.

Q Did you hear anything about Mr. Frank saying that he saw to it that this letter was destroyed?

A No.

Q Going back to May of 1969, did you hear anyone say to Mr. Moss that he is forced to retain Mr. Frank?

A No.

Q Never heard Mr. D'Onofrio say that?

A No.

Q And you never heard Mr. Moss say that?

A No.

Q Upon the occasion of the meeting where you were down in Mr. Frank's office after May 27, 1969, in words or substance did anyone say that they were forced to have Mr. Frank represent them?

A No.

Q Miss Herzfeld, you testified in response to a question by Mr. Could that there was a pending contract with McGraw-Hill Company.

Do you recall your testimony as to that?

A There was a signed contract.

Q There was a signed contract?

A Yes.

Q Could you tell me, ma'am, was that contract signed prior to February 4, 1969, the effective date of the offering?

A Yes, it was.

Q It was signed?

A Yes.

Q Was that with respect to Training With The Pros selling its product to McGraw-Hill?

A Yes, it was.

MR. FELDSHUH: Will you please mark this for identification.

(Defendant Frank's Exhibit I marked for identification.)

xx

Q I show you this piece of paper, Defendant Frank's Exhibit I for identification, and I ask you, ma'am, would you tell us generically what this is?

A This is a check, a copy of a check.

Q Does your handwriting appear on that?

A No.

Q I ask you to examine the figures, the handwritten material on the left-hand side?

A That is not my handwriting.

Q Do you recognize this check, ma'am?

A Yes.

Q Did you see it before?

A Yes.

Q What is this check?

A It is the payment checks to us from McGraw-Hill for the order.

Q In what amount was the payment, ma'am?

A $138,852.40.

Q And this was in payment of the order about which you testified you received in January of 1969?

A That's right.

MR. FELDSHUH: I offer it.

MR. SORKIN: No objection, your Honor.

(Defendant Frank's Exhibit I for identification received in evidence.)

xx

THE COURT: Anything else?

MR. FELDSHUH: Yes, your Honor.

Q I show you this book, ma'am, and I ask you if you know what it is?

A It is a ledger book, day book.

Q Ledger book?

A Yes.

Q Was this one of the records kept in the regular course of business by Training With The Pros? Would you look at it, please.

A Yes, I recognize this. This is the book that I used to list the letters of indication as they came in, the names on these letters.

Q And this book has your handwriting?

A Yes, it does.

Q I see.

MR. FELDSHUH: Will you mark this book, please, for identification.

(Defendant Frank's Exhibit J marked for identification.)

xx

Q What is a letter of indication as you understand it back at that time?

A As I understand it, it was a letter from a person who was interested in learning more about the company because they wanted to see if they -- if it was worthwhile purchasing stock in it. So they would send us a letter asking us to send them a prospectus.

Q And in that letter that you would get, would there be any specific indication as to the number of shares that they were interested in buying?

A Sometimes there was, sometimes there wasn't.

Q I see.

When you got that letter, did you record in Defendant Frank's Exhibit J for identification the receipt of that letter?

A Yes.

Q And that would be in your handwriting, as you testified?

I direct your attention to pages -- would you look

at it, please, ma'am, and tell us.

A Some of it is mine, some isn't it.

MR. SORKIN: I object, your Honor, as to relevance. I don't know where Mr. Feldshuh is going. I refrained from objecting because I didn't know. I object now. I don't see where he is going in this line of cross examination.

THE COURT: I don't think it is cross examination really, is it, Mr. Feldshuh?

MR. FELDSHUH: I made this witness my own, your Honor.

THE COURT: But I don't think also that anybody disputes but that the company had bona fide books and records. I don't know why we are going into this.

MR. FELDSHUH: I'm not questioning as to that, your Honor. I want to show in these --

MR. SORKIN: Your Honor --

THE COURT: You want to show --

MR. FELDSHUH: I will offer it, sir.

THE COURT: Why don't you offer the exhibit. Whatever is there is there.

MR. FELDSHUH: Right. I will offer it now.

MR. SORKIN: I object, your Honor.

THE COURT: Why don't you look at it before you object. Maybe you will change your mind.

(Pause.)

THE COURT: I don't think he wants to offer every entry in there, just Miss Herzfeld's listing of these letters of indication, isn't that it, Mr. Feldshuh?

MR. FELDSHUH: That and with regard to particular entries, your Honor, which I will get to once the exhibit is in evidence.

MR. SORKIN: I can't agree t, that. I don't know what in here he is offering.

THE COURT: Why don't you show Mr. Sorkin. We are just making this such a big to do.

(Pause.)

MR. SORKIN: I have no objection, your Honor.

MR. FELDSHUH: That is fine.

(Defendant Frank's Exhibit J for identification received in evidence.)

xx

Q Miss Herzfeld, would you kindly look at Defendant Frank's Exhibit J in evidence. I ask you, ma'am, do you recognize the writing on page one?

A Yes, I know whose that is.

Q Whose writing is it?

A That is Richard Kirschbaum's, I believe.

Q Richard Kirschbaum's?

A Yes.

Q Right.

At the time that this offering was going out, Mr. Kirschbaum through his mother had lent money to the company, had he not?

A That's right.

Q In the amount of some $20,000?

A That's right.

Q That appeared in the offering circular, did it not?

A Yes, it did.

Q All right.

THE COURT: Mr. Feldshuh, again I don't believe anybody is making any contest about all this. Why do we go into it?

MR. FELDSHUH: For the reason, your Honor, there are certain entries here that are very important.

THE COURT: Fine. Let's get to them. Nobody is fighting about any of this.

Q Would you go, ma'am, to the pages that you wrote, in your handwriting. By the way, is there any handwriting in here of Mr. D'Onofrio?

A I don't see any.

Q Just keep going. Go a little bit further.

MR. SORKIN: I didn't hear the answer, Mr. Feldshuh.

A Yes.

Q You are now looking at pages -- beginning with page 215; is that right?

A 201.

Q 201, all right.

Ma'am, will you tell me what these entries are --

THE COURT: Wait just a minute here. We have a hanging question. You asked her whether or not she could find anything in there that looked like D'Onofrio wrote it.

Q Would you please look and see if there is anything there that D'Onofrio wrote.

A This looks like his handwriting.

Q What page are you referring to, ma'am?

A 218.

Q Page 218?

A Yes.

THE COURT: Could you speak out so that everybody can hear you, Miss Herzfeld.

THE WITNESS: I'm sorry.

A On 218 there is something put in there under somebody's name. It looks like his handwriting.

Q Could you identify the name, please, just for the record? Read that name.

A It looks like Bernard Callinan, something like

that. That is the best I can make out.

Q What is in Mr. D'Onofrio's handwriting?

A The address.

Q The address of that gentleman?

A Yes.

Q All right.

Do you see anything else?

MR. SORKIN: Your Honor, I must object. If there are certain entries in there that Mr. Feldshuh wants to direct her attention to which are so important, maybe he can do it now.

THE COURT: Mr. Feldshuh and Miss Herzfeld, if you will brook an interruption at this point, it is time for luncheon.

Ladies and gentlemen of the jury, if you will go for luncheon now and we will resume at 2:15.

Counsel please remain.

(Jury leaves courtroom.)

THE COURT: Mr. Feldshuh, once again we are faced with a situation where, A, we have these pregnant pauses, B, what we also seem to have is circumstances where we are trying another lawsuit.

Third of all, I'm going to think that we are conducting discovery perhaps under the Civil Rules of Procedure.

None of these endeavors are helping this already protracted litigation to any kind of resolution that helps your client whatsoever.

I don't know what you are trying to do here, but if I'm baffled, it is a fair guess that maybe the jury is going to be baffled.

Would you please see if you could help us. Nobody is disputing that this company kept records. Nobody is disputing that this nice lady was in the company. Nobody is disputing that people wrote in and sought to inquire about the stock. There isn't a scintilla of an issue on that. I'm not prepared to sit around here for hours trying some other lawsuit other than that called United States against Stoller, et al. Maybe you got some civil case in mind, but try that later.

MR. FELDSHUH: I have no civil case in mind, your Honor. However, I do submit that there is much material in this book --

THE COURT: Sir, if it is there, let us know about it. You and the witness sit up there and you talk to yourselves and you pore over the pages and the poor lady is trying to help.

MR. FELDSHUH: This isn't my witness, it is the Government's witness.

THE COURT: Wait a minute. You agreed with me that you are making her your own witness.

MR. FELDSHUH: I did for this purpose, before I --

THE COURT: That is all I'm complaining about, this purpose. We have sat here for 15 minutes while you pored over this ledger. I'm not going to stand for it. There are other people involved in this trial. They haven't complained yet, but if they don't they are crazy because the jury is as mystified as I am.

Let's get down to it.

MR. FELDSHUH: Right.

THE COURT: If you want to call this witness on matters of your own, I'm thinking of having you do it later. I'm not going to listen to this now.

MR. FELDSHUH: If you give me a moment, I will tell you what I want to do.

THE COURT: I have been sitting here listening for 15 minutes and nothing happens.

MR. FELDSHUH: I had to lay a proper foundation for the introduction of this book.

THE COURT: I'm talking since the book went on.

MR. FELDSHUH: Since the book went in, your Honor, I wanted to point out that there are entries here where

there were allocations of stock to D'Onofrio's nominees in excess of a thousand and those indications were received in December of 1969, long after any possible conversation, alleged conversation with Mr. Frank.

THE COURT: May I suggest that you do it?

MR. FELDSHUH: Okay. I've got to do it the right way.

THE COURT: We just sit and wait here. I have no doubt that you have got something in mind, but all I'm asking simply, sir, is get to whatever it is. This lady doesn't know everything in the western world any more than the rest of us.

MR. FELDSHUH: That is absolutely right. I will do the best I can.

THE COURT: All right, 2:15.

(Luncheon recess.)

jqrf pm 1a

AFTERNOON SESSION

2:15 p.m.

M A R I L Y N H E R Z F E L D, resumed the stand and testified further as follows:

CROSS EXAMINATION

BY MR. FELDSHUH (Continued):

Q Miss Herzfeld, please look at Defendant's Exhibit J in evidence and I direct your attention to page 201.

Will you kindly tell his Honor and the jury how this book was kept, what the columns indicate and to the extent they indicate any sales of stock in connection with this offering?

A The book was kept first to register or record every letter of indication that came in whether or not there was stock involved. There was an indication of interest in the company. We recorded every one of those and we would send a prospectus out to each person who sent in a letter of indication.

Q On the furthest left-hand column, what does that column indicate?

A That was the date recorded it was coming in.

Q The date you received the letter?

A We received it and recorded it.

Q And the next column to the right?

A Was the name of the interested party and the address.

Q Then there is another column, what is that?

A Those were the number of shares that we indicated interest in.

Q Then there was a final column, was there not, on the far right-hand side.

What did that indicate?

A Those were the number of shares that would be allocated to them if after receiving the prospectus they would care to purchase those shares of stock.

MR. FELDSHUH: For clarification, your Honor, I want to exhibit this to the jury right here so they can get a visual impression of what this book looks like. This is the left-hand column, as you look at it. There are the names and addresses. These are the indications of stock, the amount of stock the party was seeking and the final and last column indicates actually what was allocated to the person.

Q Miss Herzfeld, will you please turn to page 205. I show you Government's Exhibit 7 in evidence and direct your attention to the name appearing thereon, Katherine T. Osborn. Does the name of Katherine T. Osborn appear on this page?

A Yes, it does.

Q With regard to this entry, will you tell his Honor and the jury when the indication letter was received?

A 12/13/1969, December 13, 1969.

Q What year?

A '68, I'm sorry.

Q And how much did Miss or Mrs. Osborn seek to purchase?

A 1,750 shares.

Q I ask you, ma'am, to look at page 207. In this connection I show you Government's Exhibit 5 in evidence and you see the name Paul Strauch?

A That is right.

Q Will you look at this page and tell me is Paul Strauch's name appearing thereon?

A Yes.

Q Will you tell me when you received that letter of indication?

A December 13, 1968.

Q For how many shares?

A 1,500.

Q I ask you, ma'am, if you look further down the page, and I show you Government's Exhibit 6 in evidence, do you see the name Warren Bundy?

A Yes.

Q Did you get a letter of indication from Mr. Warren Bundy?

A Yes.

Q When did you get it?

A 12/13/68.

Q For how many shares?

A 1,200 shares.

Q Ma'am, with regard to these three people it is correct, is it not, from Katherine T. Osborn you received an indication for 1,750, that is on December 13, 1968, from Paul B. Strauch he indicated for 1,500 shares on 12/13/68 and Warren Bundy for 1,200 shares on December 13, 1968, is that correct?

A That is correct.

Q A total of 4,450 shares, is that right?

A Yes.

Q That is the total, 4,450?

A Yes.

MR. SORKIN: I object for several reasons. Number one, Mr Feldshuh is reciting the testimony and showing his note pad to Mrs. Herzfeld. Number two, I still don't see the relevance of all this, your Honor. He has made Miss Herzfeld his witness. I have to ask for a proffer

of proof. I don't know what Mr. Feldshuh is developing here.

THE COURT: I would agree. I have been listening but I don't understand what any of this has to do with this case.

MR. FELDSHUH: It has to do with the designation of nominees and Mr. Frank being the alleged --

MR. SORKIN: Can we do this at the side bar?

THE COURT: May I suggest, if this is significant and if there is a portion of the exhibit, that is the day book so-called, that you want to call to the attention of the jury, I don't know why you don't do it. We just sit here going through this and it doesn't make any sense at all.

MR. FELDSHUH: All right, I will go to those names without any further ado.

Q Again, will you look please at Page 205. How many shares did Katheryn Osborne actually get?

A 1000.

Q When did she actually get those shares?

A Received 2/11/69.

Q February 11, 1969, is that right?

A Yes.

Q As far as she was concerned her indication was reduced from 1750 to 1000 shares, is that right?

A Yes.

Q Will you look at Paul B. Strauch and will you tell me, Madam, on Page 207, he indicated for 1500 shares on December 13, that is correct, 207?

A Yes. There is something here that I noticed.

MR. SORKIN: I can't hear the witness.

Q Will you look at 207?

THE COURT: Just a moment, please. Unfortunately, Miss Herzfeld, though the lawyer is right close by we have got to hear this too, meaning those gentlemen out there and the jury, and the back row, etc. Try to talk out. It is a difficult thing, I understand.

A On Mr.Strauch, the date is 2/15/69.

Q How many shares did he get?

A 1000 shares.

Q Looking further down the page as to Mr. Warren Bundy --

A Yes.

Q -- how many shares did he get?

MR. SORKIN: This has already been established in the documents. We will concede he got 1000 shares.

THE COURT: I would think or suggest two things, Mr. Feldshuh, which are apropos of this objection. First of all, I believe all this is established by documents already in evidence. If I am wrong about that, then I think you ought to take advantage of Mr. Sorkin. There is no real serious issue about the number of shares taken down by the nominees.

MR. FELDSHUH: Except that the dates are important.

THE COURT: If they are shown in the book, it is in the book.

MR. FELDSHUH: I will read the entries and be done with it.

MR. GOULD: The jury could not possibly understand that from what is going on.

THE COURT: I have been struggling to suggest this, Mr. Gould, since at least a quarter to 1:00 today. I quite agree. This is the only thing I have in my mind. This

is the only thing I have in my mind. This is what puzzles me.

MR. GOULD: Wouldn't it help if we all conceded that these are the same persons that D'Onofrio identified?

MR. SORKIN: I will be happy to.

MR. GOULD: Then we can stop messing around with the book.

MR. SORKIN: I will be happy to identify those people.

MR. GOULD: We will all join in conceding that these are the same people that D'Onofrio said were his nominees.

THE COURT: I believe it is in the record anyhow but I quite agree with your approach.

MR. GOULD: The jury could not possibly understand that from what is going on.

THE COURT: Why don't you stipulate, in any even t.

MR. SORKIN: I will stipulate that Paul Strauch received 1000 shares and he was Mr. D'Onofrio's nominee. I will stipulate that Warren Bundy received 1000 shares and he was Mr. D'Onofrio's nominee.

I will stipulate that Ruth Recca was Mr. D'Onofrio's nominee and she received 1000 shares.

I willstipulate that Katheryn Osborne was Mr. D'Onofrio's nominee and she received 1000 shares, and Government Exhibit 9 in evidence shows 900, but if Mr. Feldshuh wants to direct me to the book for Kathleen Howe, I will stipulate, your Honor, as reflected on Government Exhibit 9 that she received 900 and she was Mr. D'Onofrio's nominee.

MR. FELDSHUH: Will you further stipulate --

MR. SORKIN: That she put an indication in for 1000.

MR. FELDSHUH: An indication for 1000 on February 4, 1969.

MR. SORKIN: I will stipulate to what it says right in the book.

MR. FELDSHUH: And that Santo Recca put an indication in for 2000 shares on February 4, and was allocated 1000 shares?

MR. SORKIN: I will stipulate to that. I thought I stipulated to that.

THE COURT: You did.

MR. FELDSHUH: He didn't stipulate as to the indication.

THE COURT: Mr. Feldshuh, I am sorry. You are involved and I am listening. I know what I heard. There is ample evidence in the record and besides that, the book

y ou are reading from is in evidence.

MR. FELDSHUH: Okay.

We have gotten two out of the five of Mr. D'Onofrio's nominees.

Will you stipulate, Mr. Sorkin, that with respect to Mrs.Edward A. Osborne, also known as Katheryn T. Osborne, that on December 13 she indicated for 1750 and that on February 11, 1969 she was allocated 1000 shares?

MR. SORKIN: I will so stipulate.

THE COURT: Look, gentlemen, here is another problem that you don't seem to realize. Ycu are mumbling in a way that the jury could not possibly hear, perhaps, did you ever think of that one?

MR. SORKIN: Maybe I can expedite this.

MR. FELDSHUH: Let me do it my way, would you, please?

MR. SORKIN: Yes, sir.

MR. FELDSHUH: I don't think we need repeat about Mrs. Osborne, your Honor. I will go to Paul B.Strauch.

Mr. Sorkin, will you stipulate, please, that on December 13, 1968, Mr. Paul B.Strauch indicated for 1500 shares and that he was allocated 1000 shares on February 13, 1969?

MR. SORKIN: I so stipulate.

MR. FELDSHUH: With respect to Warren Bundy, also on Page 207, will you stipulate that on Cember 13, 1968, he indicated for 1200 shares and on February 14, 1969, was allocated 1000 shares?

MR. SORKIN: I so stipulate.

MR. FELDSHUH: Thank you.

THE COURT: Anything further that you gentlemen wish to ask Miss Herzfeld?

MR. FELDSHUH: A few more questions, sir.

THE COURT: All right, sir.

End 1B

Q Miss Herzfeld, you testified as to a conversation that was held at the home of Mr. D'Onofrio on May 30, 1969, wherein there was a talk amonst Mr.Moss, Mr. D'Onofrio and yourself with regard to Mr.Barton's representation of Mr. Moss before the Commission.

Do you remember that conversation?

A Yes.

Q All right. In connection with that conversation, what did Mr. Moss say in words or substance with regard to the representation that he was getting from Mr.Barton?

A He said he was --

Q Would you keep your voice up, please?

A Sorry. He said he wanted no more of Pat Barton, that he had no confidence in him after what happened, he felt that Mr. Barton was wrong in allowing him to testify before the SEC without previously being made aware that he was going down to testify, and he felt that he had just handled it poorly; he had no confidence in him as a lawyer.

Q These remarks came from Mr. Moss, is that right?

A Yes.

Q Did Mr. Moss in words or substance suggest that he have another attorney?

A Mr. Moss said he was going to get another attorney.

Q Thank you.

Again, Miss Herzfeld, was there ever a point in time where the SEC representatives came to the office of TWP?

A Yes.

Q When was that, to your best recollection?

A It was prior to Mr. Moss being interrogated by SEC. It was some time during March or April, I believe. It had to be during April.

Q Right. Upon that occasion did you show these representatives letters of indication?

A Yes.

Q Did that include Government Exhibit 4 in evidence?

A It included all the letters, including that.

Q Thank you.

Miss Herzfeld, you know or did you know the firm of D'Onofrio, Feeney & Kirschbaum?

A Yes.

Q Did you know that Mr. Kirschbaum was a partner of Mr. D'Onofrio's in 1968?

A I did not know what their arrangement was, whether he was a partner or merely an associate in certain enterprises.

Q But you did know that there was a relationship

between Mr.D'Onofrio and Mr. Kirschbaum , is that right?

A Yes.

Q In connection with Mr. Kirschbaum writing in the day book, was he given the privilege -- how was he given that privilege to write in the day book, the stock book, record book?

A I really didn't think about it at the time because he came up with a couple of -- you know, some indications and he just showed -- started to show me how to keep the day book and automatically wrote into it.

Q I see.

MR. FELDSHUH: I have no further questions.

THE COURT: Any redirect?

MR. SORKIN: Just a few short questions, your Honor.

REDIRECT EXAMINATION

BY MR. SORKIN:

Q Miss Herzfeld, Mr. Gould showed you those little slips of paper that you wrote out in your handwriting.

A Yes.

Q I think he asked you if you gave the certificates to these people or, in fact, to any people. Did you hand certificates to people?

A No.

Q Who sent the certificates out?

A The certificates were handled by Irving Trust Company, who was our transfer agent at the time.

Q They sent the certificates out?

A They sent the certificates directly, yes.

Q These slips that you wrote out,1 through 5, did you write these slips out for everyone who purchased or who indicated for Training With the Pros?

A That I am not sure of. I know I gave receipts on a number of -- when I got a check in. If I got a check in without the subscription coming back with it, I usually did send a receipt.

Q But you sent out more than just five?

A Yes, I'm sure I did.

Q By mail?

A Usually by mail.

Q Mr.Feldshuh asked you about Government Exhibit 4 and he asked you, and I think I am quoting, that you retained the files of Training with the Pros. Do you recall him asking you that question, until you moved to Florida?

A Yes.

Q Did you testify on direct examination that at one point you gave some files to Mr. Frank?

A Yes, I did give him some things.

Q And then you got those files back?

A Yes, and then I also gave them to the SEC and got them back.

End 2A

Q I think you also said that with respect to Mr. Feldshuh's question, that you assumed or assume that Exhibit No. 4, that indication letter, was in the files when you went to Florida.

Do you recall him asking you that and giving that answer?

MR. GOULD: I don't think she said that at all, your Honor.

THE COURT: Whether she did or didn't, the jury will decide. I will treat your objection, however, as an appropriate one as to form.

Reframe it, please.

Q Do you recall Mr. Feldshuh asking you with respect to Government's Exhibit No. 4, the indication letter, whether it was in your files when you moved to Florida? Do you recall that?

A Yes.

Q The Judge has indicated the jury's recollection will recall it.

Did you say that you assumed that --

THE COURT: Sustained.

Q Did you see that letter in your files after you put it in the files when Mr. Moss came back from the SEC?

A I never went through the files so I would not --

I only knew that the letters were in there. I didn't go through them one by one. I couldn't say that I actually saw the letter each time I went into my files.

Q Were you present at all occasions when Mr. Moss met with Mr. D'Onofrio?

A No.

Q Did Mr. D'Onofrio and Mr. Moss have conversations outside of your presence?

A Yes, they did.

MR. SORKIN: No further questions.

THE COURT: Thank you, Miss Herzfeld, you may be excused.

(Witness excused.)

MR. FELDSHUH: Just one question.

THE COURT: She has been excused. Did you hear me excuse her a couple of seconds ago?

MR. FELDSHUH: I'm sorry, your Honor. I was listening to my associate.

THE COURT: I'm sorry. I don't see anything that needs to be gone into. Let's get the next witness.

MR. SORKIN: The Government calls Eric Bregman.

E R I C B R E G M A N, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SORKIN:

MR. SORKIN: May I proceed, your Honor?

THE COURT: Please do.

Q Mr. Bregman, please keep your voice up.

Mr. Bregman, are you employed?

A Yes, I am.

Q In what capacity?

A I'm an attorney.

Q How long have you been a member of the Bar?

A About five and a half years.

Q Are you in private practice now?

A Yes.

Q Prior to going into private practice, what did you do, sir?

MR. FELDSHUH: Objection, not relevant.

THE COURT: Yes. I don't think we need to go into that, Mr. Sorkin.

MR. SORKIN: Very well, your Honor.

MR. GOULD: Unless he is an expert.

Q Mr. Bregman, did there come a time, sir, when you were appointed under the Criminal Justice Act to represent one Jerome Allen?

A Yes.

Q Do you recall when that was?

A It was either January 16th or January 18, 1974.

Q Did there come a time, Mr. Bregman, where Mr. Allen in your presence entered into an agreement with the United States Attorney's office?

A An agreement in writing?

Q Yes, sir.

MR.GOULD: I object to this, your Honor. I don't see the propriety, materiality or relevancy. What does this have to do with us?

THE COURT: I think I will allow a yes or no answer, period.

MR. SORKIN: Your Honor, may I be heard on this? I think it is very important. I ask the Court's indulgence on this particular point.

THE COURT: I said, and I repeat it, I will allow a yes or no answer. Then if you wish to push any other questions, you are going to have to put them and we will see what happens.

MR. SORKIN: I will, your Honor. Thank you.

Q What is your answer, Mr. Bregman?

A Do you mean agreement in writing? The answer is yes.

Q Mr. Bregman, let me show you what has previously

been marked as Government's Exhibit 42-C for identification.

I will ask you to look at that, sir, and I ask you if that is the agreement and are those your initials on it?

MR. GOULD: I don't understand how counsel can go forward with this line in view of your Honor's indication as to how we were going to treat this.

THE COURT: I made no indication other than I would take a yes or no answer to a previous question.

MR. GOULD: Then I object to the question.

THE COURT: I'm going to overrule the objection and ask, however, that the witness remember all we need to know from him and all he is asked is whether or not this is a copy of that agreement. Yes or no.

A Yes, this is an agreement and, yes, those are my initials on pages one and two and my signature on page three.

MR. SORKIN: Your Honor, at this time we offer 42-C into evidence. I show it to Mr. Gould. Counsel have already been served with copies before, your Honor.

THE COURT: If they have been already given copies, I would like to see that.

MR. SORKIN: Yes, your Honor.

THE COURT: They can see their own. Thank you.

(Pause.)

THE COURT: I take it you gentlemen object?

MR. GOULD: Yes, indeed.

THE COURT: I am going to sustain the objection. I don't see any relevance here. I assume you are offering the 43 counts of the joined indictment. I don't see the relevance.

MR. SORKIN: I would like to ask the witness a question and I might have to lead him a bit.

THE COURT: I think maybe since you seem to be determined to press this, it might be wise if we took the afternoon recess at this point and I will ask the jury to be excused and you can make a precise offer of proof to which counsel and I will listen and maybe we will understand it better.

MR. SORKIN: Yes, your Honor.

THE COURT: Please remain seated, Mr. Bregman.

Ladies and gentlemen, if you take your recess now, I think it will be about ten minutes. If not, I will send word in to you.

(Jury left courtroom.)

THE COURT: Mr. Sorkin, you are going to have to explain what this is and if any counsel wants to excuse Mr. Bregman during this, say so.

MR. GOULD: I would like to see him outside

during the argument.

THE COURT: Would you mind waiting outside, Mr. Bregman.

(Witness leaves room.)

THE COURT: I am at a loss. What earthly relevance is this agreement, 42-C for identification--

MR. SORKIN: Your Honor, it has this relevance:

Mr. Allen and Mr. Bregman and Miss Oblaff of the Government signed that agreement on March 5, 1974. That agreement reflects the fact --

THE COURT: It reflects what it reflects. What is it you really want to get into this for?

MR. SORKIN: What I am trying to show, your Honor, is that Mr. Allen began to cooperate with the Government officially on March 5th, unofficially sometime before, and that immediately after this agreement was signed the Government notified, and we will bring it out through another witness, counsel for Mr. Stoller and counsel for Mr. Frank that Mr. Allen had agreed to cooperate and was going to testify in this particular case.

THE COURT: If they didn't know it already I would have been astonished.

MR. SORKIN: I don't think they did.

THE COURT: Maybe not.

MR. SORKIN: And that immediately after being notified Mr. Stoller made certain telephone calls both to Mr. Bregman, to Mrs. Allen and to Mr. Allen's son.

THE COURT: Stop right there. That doesn't bootstrap this document in its four corners into evidence.

MR. SORKIN: I am trying to show, your Honor, that everyone who was a party in this case, Mr. Stoller and Mr. Frank, knew that as of March 5th Mr. Allen was cooperating. Otherwise, the statements --

THE COURT: Fine, Mr. Sorkin. You amaze me and you have amazed me since the day you started here. You go off on one tangent and I have to confess that I am always in a different wave length than you are most of the time. You don't seem to see the simple point involved here. Counsel have objected to the proffer of a physical piece of paper which is an agreement. This has nothing to do with what you are talking about. It has no probative force at all and it might be misconstrued by the jury.

I think defense counsel is clearly right. I would say to you everyone assuming everything you say is true, and I have no doubt that you are trying to tell the truth as you know it, it doesn't help you any.

I just don't get it.

MR. SORKIN: I have to show that these defendants

knew that Mr. Allen was cooperating on March 5th. The only way I can do that is through Mr. Bregman.

MR. GOULD: He says he has a fellow who called up and told us. Put him on the stand.

THE COURT: That is right. I don't follow you. From your own point of view you do things and say things that are non sequitur. You just completely demolish any kind of sense that I can see to what you are doing.

First of all, the four corners of this agreement, you know what I mean by that, the agreement, its terms -- I would pass what I think is the agreement, but be that as it may, it doesn't prove anything from your point of view. Why you don't join with the defense in this, I don't know. Since you don't I am going to sustain the objection to the prffered document.

MR. SORKIN: I would like to ask Mr. Bregman then if he was present with representatives of this office on March 5th and several days prior and ask him if Mr. Allen agreed to cooperate with the United States Attorney's office.

THE COURT: So he cooperated. That doesn't have anything to do with Messrs. Frank and Stoller.

MR. SORKIN: I respectfully disagree. It does because there is a charge in the second indictment that

they attempted --

THE COURT: Honestly, I don't understand you, Mr. Sorkin. I really don't understand you. My Labrador Retriever makes more sense than you do in these matters and he hasn't gone to law school. Listen to me. Take what you yourself said. If you want to prove that somebody called up counsel for these people, that is quite a different thing. But Bregman apparently never did so and I would be astonished if he said he did. Maybe he did but you don't offer that.

In other words, what I am trying to tell you, Mr. Sorkin, even assuming everything as you assume it, Bregman is not your witness for that particular purpose or purposes. That is what really astonishes me. You seem to meto be reasonably intelligent and I assume you have a degree somewhere or you wouldn't be here. Conversations like this make it seem as though either I am off my hinges or you are.

I don't know which one of us. Don't you understand the point?

MR. SORKIN: I do, your Honor.

THE COURT: I understand the three counts under which this is generally speaking is supposed to come but Bregman doesn't do it. Maybe it is one -- who is it --

one of the people at the table here who called up? That is something else again.

MR. SORKIN: I do have more direct examination of Mr. Bregman and I would like to proceed on that.

MR. GOULD: On that subject, so we don't complicate things, would counsel hand up to the Court a copy of 3510-A so his Honor can understand. We have another little problem and with your indulgence I will anticipate since the jury is out.

THE COURT: What is this?

MR. GOULD: Bregman's testimony before the grand jury. If your Honor will turn -- and I don't care about anything in it in the first two pages -- but if your Honor will turn to the third page of it, the question at the bottom: "Did he accuse" and I won't read it for reasons which are obvious.

Tk 3B

qb Bregman-direct

THE COURT: Page SA3 --

MR. GOULD: SA4. Look at the question on the bottom of the page starting with the words "Did he accuse." I assume that counsel is going to try to elicit that from this witness. I know this is a premature objection but your Honor will understand why, with the nature of the material, I make it out. I point out that however sordid might be the language involved, it does not constitute a threat of any kind. The invocation of the right to use legal process is not a threat and if counsel tells me he doesn't intend to elicit that from the witness I will subside and apologize for the waste of time.

If he says he is going to use it, then I ask your Honor to rule because of the character of the language preliminarily that it is not admissible.

THE COURT: We already heard enough language from Mr. D'Onofrio and others here in this case.

MR. GOULD: That is not the basis of my objection.

THE COURT: That is what I am saying.

MR. GOULD: I am not that fastidious about the language.

THE COURT: I didn't think so. What is your point?

MR. GOULD: It does not constitute a threat. It

is irrelevant, immaterial, has no probative value and is inflammatory and prejudicial to the defendant Stoller.

MR. SORKIN: May I be heard?

THE COURT: Just a moment.

MR. GOULD: I am only confining myself to that material which is after the "Q" and following the words "Did he accuse." The rest of it we will deal with during the ordinary course of the trial.

THE COURT: First of all, Mr. Sorkin, are you going to lead Mr.Bregman into this conversation on March 6?

MR. SORKIN: I am. I intend to elicit the conversation.

THE COURT: I am inclined to think that the Government is correct. I don't understand the defense point.

MR. GOULD: What is the probative value of the conversation? There is no threat there. He doesn't say --

THE COURT: I think the jury can decide that. Maybe you can persuade them of that. I would think if somebody calls up my lawyer and says listen, if Tyler takes the stand I am going to accuse him of all kinds of terrible things -- you say that is not a threat?

MR. GOULD: No, sir, as long as he accuses him of it in a courtroom under proper circumstances. He has a right to do it.

THE COURT: Assuming that he has the right to do it --

MR. GOULD: If he says I am going to kill him, if he says I am going to kidnap his children, that is a threat, but if he says, "Look, before you take that guy into a courtroom I want you to know that I can prove that he once stole something off the counter in Woolworth's" --

MR. SORKIN: That he is a homosexual.

MR. GOULD: We don't need that kind of gratuitous observation. Is that for the benefit of the people in the courtroom?

MR. SORKIN: It is for the benefit of the Judge.

THE COURT: You don't think the Judge can read?

MR. SORKIN: I do, but I am answering your objection.

THE COURT: Don't interrupt. I don't follow that reasoning. What it comes down to is that you are saying that he could maybe prove this. Maybe he could.

MR. GOULD: Even if he proved it, so what? It is not a threat. He is saying that I am going to do something which he is perfectly within his rights to do.

THE COURT: I am not ruling on the case here. YOu are making an objection to proffered testimony . This is a very low threshold item. I might agree with you. If

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this is all the Government is going to prove, it isn't going to be a heavy case and it may be sustainable or rather any motion to dismiss or acquit may be very, very valid. That doesn't mean I keep all the evidence out.

MR. GOULD: How about its prejudicial character?

THE COURT: What is prejudicial about this according to your own thesis?

MR. GOULD: To a jury who really has a manipulation case in front of it with these counts thrown in for window dressing.

THE COURT: Nobody objected to the Government's motion to consolidate them here. Nobody would deny them that and you may be right and there may be nothing to this, but my heavens, in 1974 do you think that some people of the obvious stripe and kind that our jury is are going to somehow be different than you or Mr. Sorkin or Mr. Feldshuh or me?

MR. GOULD: You are making that too broad, your Honor.

THE COURT: You see the point I am making.

MR. GOULD: I will respect your Honor's ruling. I think it is a respectable approach. I think mine is too. I gain nothing by pursuing it. I think it is put in here for atmosphere, window dressing. I think it beclouds the real issue in the case and I think it is prejudicial.

THE COURT: There is one other problem too and let me point this up so you know what is on my mind.

The Government has handed up to me, and I have read them in a curosry fashion, some transcripts of some wire-taps. The day in question is this very day. Well, assuming the transcripts are reasonably accurate, which I wouldn't know at the moment, I read those to be something very close to what is said here by Mr.Bregman.

If you aregue to me that as a matter of law this doesn't come out to a threat, that may be so. I don't know that much about the law on this field. But if you say we can't get into it because it is irrelevant, no, it is relevant. Then the only other question is, is it so shocking or inflaming that it might provoke an unfair trial even if this Court later agrees and quashes the counts that the Government is obviously offering these under, I don't really agree.

Not in 1974, not even for a group of elderly lawyers and Judges who always moralize about things in quite a different way than the general public does.

MR. GOULD: I assume your Honor is going to give me latitude in the cross-examination of this fellow?

THE COURT: I am going to permit it.

MR. GOULD: I will get latitude in the cross-

examination?

THE COURT: I don't know why not.

MR. GOULD: I shouldn't say that. I was just piqued.

THE COURT: You shouldn't be piqued. You can go into it on cross as long as you stick to your knitting.

Very well, what is next? Is there any other issue that we should take up while the jury is out?

MR. FELDSHUH: If Mr. Bregman is going to testify as to any conversations between Mr. Stoller and himself under those counts of the indictment, I might point out, and I think, your Honor, there should be an instruction to the jury even now that those conversations are not binding upon the defendant Frank.

THE COURT: Oh, you bet your boots. If you would like that I would be glad to give it because it is obviously the case.

MR. GOULD: It is not being offered against Frank.

THE COURT: Not even Mr. Sorkin would disagree with that, right, Mr. Sorkin?

MR. SORKIN: You are absolutely correct.

THE COURT: Take a few minutes to clear your pipes and we will get back at it. I willnot receive 42C and I don't want to hear anything more about the contents of that

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document and I will so instruct the jury.

May I retain for the time being this grand jury document?

MR. SORKIN: Yes, your Honor, we made a copy for the Court.

(Jury present.)

MR. SORKIN: May I proceed, your Honor?

THE COURT: Yes, sir. Before you do, let me say to Mrs.DeBartello, and ladies and gentlemen of the jury:

Before you left the Government had offered an exhibit which is supposed to be a memorandum of agreement which Mr.Bregman identified.

End 3B

Tk 4A

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We call it here Government Exhibit 42C for identification. The Court has sustained the objection of the defense to this document and it is not received.

BY MR. SORKIN:

Q Mr.Bregman, let me direct your attention to February 25, the arraignment in this particular case.

Did you have a conversation with Mr.Frank?

A Yes.

MR. GOULD: Is this being offered against Frank or against us?

It is outside the conspiracy count, your Honor.

THE COURT: I quite agree with that. Again, we have to have a date, although I think it can be assumed when it was, but let's be careful what we are doing here. You mean by that February of this year, I assume?

MR. SORKIN: That is correct. It is only being offered against Mr. Frank on Count 3 of the second indictment.

THE COURT: All right, let's go ahead.

MR. SORKIN: Yes, your Honor.

THE COURT: Did you have such a conversation on that day, sir?

THE WITNESS: Yes, I did.

THE COURT: All right. Next question.

Q Mr.Gregman, let me show you what has previously

been marked as Government Exhibit 42A for identification. I ask you if you can identify that document, just what it is, 42A?

A This is a document that Mr.Frank handed me on the morning of February 25th at the arraignment, if that was the date. I am not sure of the exact date, but it was the arraignment.

Q Is that the document he handed to you?

A Yes, it is.

Q How can you identify it?

MR. FELDSHUH: He said it was a document, your Honor.

THE COURT: Yes. I don't think we have to have a dilation on that subject. He claims he can identify it.

MR. SORKIN: Your Honor, we offer 42A in evidence. I show it to defense counsel.

MR. FELDSHUH: No objection, your Honor.

MR. GOULD: Just one second, Mr. Feldshuh. I understand counsel is saying that he is offering this under Count 3 and only under Count 3.

THE COURT: Correct. I understood him to say so, too. I believe he also said, but of this I am not certain, that he was offering this only as to the defendant Frank.

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Is that correct, Mr. Sorkin?

MR. SORKIN: That is correct, your Honor.

THE COURT: All right.

MR. GOULD: Then I can't object to it.

THE COURT: Mr. Feldshuh, I couldn't hear what you said, I am sorry.

MR. FELDSHUH: No objection.

THE COURT: No objection?

MR. FELDSHUH: Right.

THE COURT: All right. Then 42A will be received as to the defendant Martin Frank only.

xxx (Government Exhibit 42A for identification was received in evidence.)

MR. SORKIN: Your Honor, may I read 42A to the jury

THE COURT: All right.

(Mr. Sorkin read from Government Exhibit 42A in evidence to the jury.)

MR. SORKIN: Signed Jerome Allen.

MR. GOULD: It is not signed.

MR. SORKIN: I am taking back "signed." There is a place for signing. It says typed "Jerome Allen, not sworn to, before me this 20th day. There is no writing on the bottom of that.

THE COURT: In other words, quite evidently there

is no signature.

MR. SORKIN: That is correct, your Honor.

THE COURT: All right.

End 4A

Q Mr. Bregman, when Mr. Frank gave you this document, did you have a conversation with him?

A Yes, I did.

Q What did you say to him and what did he say to you?

A I believe Mr. Frank said to me, "Here is the affidavit that Jerry talked to you about or that Jerry told you about."

Q Did he say anything else to you?

A Not that I recall.

Q What did you do with the affidavit?

A I looked at it --

MR. FELDSHUH: I object to that as not binding on the Defendant Frank.

THE COURT: I'm inclined to agree. I don't think that we should go into what he did with it. He was counsel for Allen at the time.

Q Did you take the affidavit with you?

A Yes.

MR. SORKIN: That is all I'm asking, your Honor.

THE COURT: All right.

Q Mr. Bregman, did there come a time when you received a telephone call --

MR. GOULD: Wait a minute. If he is going to

another subject, your Honor, I'm mystified by what has happened now. I know this was not offered against the Defendant Stoller. Nevertheless, we are here in the courtroom and what we have just seen I respectfully suggest is something that is utterly devoid of probative value, and I will move to strike it out, strike out all the testimony about the conversation with Frank. I move to strike out the exhibit. It is absolutely without any probative validity whatever on any subject.

THE COURT: At the moment you could be right, but I'm taking this in effect subject to something else coming in later.

MR. GOULD: I thought there was going to be more on it. He's going to another subject.

THE COURT: I don't know what he is going to.

MR. SORKIN: Your Honor, I intend to go now --

THE COURT: Let's ask questions. Your motion is --

MR. GOULD: I think your Honor is right.

THE COURT: Your motion is denied without prejudice to renewal later when we see more about this.

MR. GOULD: Thank you, sir.

Q Mr. Bregman, did there come a time when you gave this affidavit to Mr. Allen?

MR. FELDSHUH: Your Honor, I object. Ask him what he did with the paper.

THE COURT: Mr. Sorkin, again, I wish you would raise this when we took up these other matters.

MR. SORKIN: I don't think this is in any way, your Honor -- I'm merely showing a chain of custody to get to the next witness. I don't see what problem Mr. Feldshuh raised. I'm sorry.

THE COURT: Would you be content with a yes or no answer to this or are we going on into conversations with Allen?

MR. SORKIN: I'm not going on into conversations. I didn't ask him conversations.

THE COURT: I know you didn't. I'm asking you for the future.

MR. SORKIN: I will stay away from any conversations.

THE COURT: Then I will allow this.

Q What, if anything, did you do with this affidavit, Mr. Bregman?

A After I received it I looked at it and I -- I believe I can say that I discussed it with Mr. Allen.

Q Don't tell us the conversation.

A That's right. We had a discussion concerning it.

Until yesterday it was my belief that I had given this particular copy of it to him, but I found this in my files yesterday so apparently I did not.

Q Did you give any copy to him as far as you know?

A No, I only received one copy from Mr. Fran as far as I can recall.

Q All right.

Did there come a time when you received a telephone call from me?

A Yes.

Q Let me direct your attention to March of 1974.

A Yes.

Q After our conversation did you then receive a telephone conversation from Mr. Stoller?

MR. GOULD: By way of objection, I don't think counsel means what he said. Would you read the question.

Q Did you receive a telephone call from Mr. Stoller?

A Yes.

Q What was the date of the call from Mr. Stoller?

A I believe it was March 6th of this year.

Q Do you recall when I called you?

A I believe, in fact, I spoke with you on the phone both on the 5th of March and also on the 7th or 8th.

MR. FELDSHUH: Keep your voice up, please.

A I believe I had telephone conversations with you on the 5th of March and also on the 7th or 8th of March.

Q Now, did you have a telephone conversation with Mr. Stoller when he called you?

A Yes, I did.

Q To the best of your recollection, tell us please what Mr. Stoller said to you and what you said to Mr. Stoller?

MR. FELDSHUH: Objection on behalf of the Defendant Frank, not binding on the Defendant Frank.

THE COURT: I take it, Mr. Feldshuh, that Mr. Sorkin is not offering this as to your client, is that correct?

MR. SORKIN: That is correct, your Honor.

Go ahead.

A To the best of my recollection Mr. Stoller identified himself.

Q Keep your voice up.

A He identified himself as the -- Mr. Allen's co-defendant in this matter. He also said that he had learned that Mr. Allen had entered a guilty plea and was cooperating with the Government and then he told me he understood that it was my duty to represent Mr. Allen and he had no personal ill feeling towards me and he then let loose an invective against Mr. Allen.

Q Tell us what he said.

A The only phrase that I can specifically recall is "I have seen some animals before but never one as ugly and fat as Jerry."

Q Tell us in substance then what the rest of the conversation was.

A The rest of the conversation was fairly strong language.

Q Tell us the language, please.

MR. GOULD: Not just the language, tell us what he said.

THE COURT: Yes. The question really is:

As best as you can recall what did Mr. Stoller say and what did you say?

THE WITNESS: As best as I can recall, Mr. Stoller called Jerry Allen a fucking animal at one point. He said that if Jerry testified against him in this matter that he would introduce evidence of various sexual relationships Jerry had mostly with women and he made one offhand reference to homosexual relationships which he claimed existed. That is what he said.

My response was that he should not -- he also asked me to have Mr. Allen call him. I told him that I directed Mr. Allen not to have any more contact with Mr. Stoller and I asked Mr. Stoller not to call him.

Q Did you say anything else or did Mr. Stoller say anything else?

A I also told Mr. Stoller that Mr. Allen was that very day appearing as a Government witness in another matter and that if Mr. Stoller harassed Mr. Allen in any way with telephone calls that could be construed as interfering with a Government witness.

I asked him not to call Mr. Allen.

Q Did Mr. Stoller say anything else?

A He hung up the phone.

MR. SORKIN: No further questions, your Honor.

CROSS EXAMINATION

BY MR. GOULD:

Q What time of day was the phone call?

A It was either shortly before or shortly after lunch, to the best of my recollection. I was in my office.

Q Don't you remember the time?

A I don't remember the exact time.

Q Didn't you make a memorandum?

A I did.

Q Where is it?

A It's in my file with me here.

Q Doesn't that tell you what time it was?

A It does. It's either 11:45 or 1:45.

Q If I suggest to you that you told the grand jury on March 11, 1974 when you testified there that it was 1:45, does that refresh your recollection? YOu will accept that for all the purposes of this conversation?

A I will accept it.

Q You got a call about 1:45, that is after lunch, right?

A Yes.

Q Now, Mr. Bregman, before you went into private practice about five years ago where did you work?

A I didn't go into private practice five years ago.

Q I thought you did. When did you go into private practice?

A I graduated from law school in 1968. I went into private practice in 1970.

Q From 1968 to 1970 what did you do?

A I was a law clerk to one of the judges in this court.

Q You were never in the United States Attorney's office, were you?

A No, I was not.

Q You were assigned by the Court under the Criminal Justice Act to represent Mr. Jerome Allen, is that right?

A That is correct.

Q Shortly after you were so assigned you began to have some conversations with people in the United States Attorney's office, isn't that right?

A That is correct.

Q And the general thrust of those conversations was to see what kind of deal could be made for Jerry Allen, just yes or no?

A No.

Q No?

A No.

Q What was the general thrust of the conversations?

A Well, there were a long series of conversations.

Q I just want a general conversation. You didn't prepare a case for trial, did you?

A No, I did not.

Q You read the indictments?

A Yes.

Q And am I not right that the extent of your legal services for Mr. Allen, the bulk of your legal services for Mr. Allen, consisted of conversations with Sorkin and other people in the United States Attorney's office about cooperation?

A I think you have to segregate it into sections, Mr. Gould.

Q You tell us instead of my fumbling around, you tell me what you did.

A My initial investigation was to find out what the case was about and what kind of case theGovernment had, then to determine whether or not to attempt to work out whatever kind of arrangements we could with the Government or not. So during that stage I was not discussing any arrangements. I was deciding -- Jerry Allen and myself together were deciding whether or not the Government had a sufficient case, what the probabilities were and all of the matters that you are much more familiar with than I.

After we made a tentative determination that Jerry would plead guilty and be a cooperating witness, I then had many discussions with Mr. Sorkin and others to make the best possible arrangements.

Q Just tell us which others, Mr. Sorkin, Mr. Doonan was in on some of them?

A Yes.

Q Mr.Edwards?

A I don't think I ever spoke to Mr.Edwards.

Q Sorkin, Doonan, who else?

A Mr. Michael Eberhardt, who is not in this office but who is in the organized strike force office.

Q Organized what?

A Organized Crime Task Force.

Q Go ahead, who else?

A There may have been one or two other investigators who were present at times that I was in Mr. Sorkin's office, but I do not remember any conversations directly with them as opposed to conversations with Mr. Sorkin at which they were present.

Q At any rate, the time came when you had made arrangements with them for Allen to plead guilty, correct?

A Yes.

Q Such a time came and that was around the beginning of 1974?

A That is right.

Q And then after that happened you tell us that on March 6 at 1:45 in the afternoon Mr. Philip Stoller called you on the telephone?

A That is correct.

Q You didn't record the conversation, did you?

A No, I did not.

Q But you did make some notes of the conversation?

A I don't really remember whether I made handwritten notes. I dictated a memo immediately after the conversation.

Q And in that conversation, as I understand your

testimony, Number 1, Stoller was quite polite to you at first, correct?

A To me personally, yes, he was.

Q I didn't make that language up. You characterized his conversation as quite polite to me personally, didn't you?

A That is correct.

Q And thenhe asked you if it was right that Allen had pleaded guilty and you said yes.

A That is correct.

Q And at that point Stoller seemed to get very upset, didn't he?

A Yes, he did.

Q There was a change in the quality of his voice?

A A change in the tone or quality, yes.

Q Should we say that there was a change in the emotional tone?

A Yes.

Q You could tell just from the way he was talking that he was very upset?

A That is the way it seemed to me, that is correct.

Q As much as you can tell in talking with a fellow on the telephone.

A Yes.

Q And then he said a number of uncomplimentary things about Jerry Allen, right?

A Right.

Q He said, did he not, that Jerry Allen in one way or another was a fat pig or a fat animal, something like that?

A That is right.

Q And then he said very bad words like "fuck," and "he is a shit," and so on, right?

A That is right.

Q Did that upset you?

A No.

Q Did you understand that when he used that language he was upset?

A Yes.

Q You knew, did you not, that Mr.Stoller and Mr. Allen had had a long personal relationship, didn't you?

A Yes.

Q You knew they had been friends for many years?

A Yes, sir.

Q And you knew that on this day, on March 6, Mr. Stoller learned for the first time that this friend was going to do something that he, Stoller, regarded as very harmful and injurious to him?

A Mr.Stoller and I didn't have any discussion about that.

Q But you knew that, that was in your mind.

A There are a lot of characterizations. I knew that he had learned that Jerry was going to enter a guilty plea in this matter and was probably going to testify against him.

Q Mr.Gregman, what I want to do now, you see, because this conversation is coming to us through your ears and through the apparatus of your mind. I want to know what was in your mind. As you sat here on the telephone was this manStoller talking to you and you knew that he was emotionally upset, correct?

A That is right.

Q And you knew that his emotional upset derived from the fact that a manwho had been almost a lifetime friend of his was going to do something which he, Stoller, regarded as injurious to him, isn't that right?

A Mr. Gould, I suspected.

Q You suspected.

A That his emotional upset was because Mr. Allen had entered a guilty plea and was going to testify against him.

Q And he thought he was going to hurt him that way,

right?

Then you tell us --

MR. SORKIN: I don't think there was an answer.

A I don't know what he thought.

Q I beg your pardon?

A I don't know what he thought.

Q I only want to know what you thought he thought.

MR. SORKIN: Objection.

THE COURT: I think we have covered that enough.

MR. GOULD: I think so too.

THE COURT: Next question.

End 5B

Q Then Mr. Stoller goes on and he makes some statements about if Jerry takes the stand he is going to prove certain sexual things, right?

A That is correct.

Q He didn't name anybody, did he?

A He made a reference to someone, the homosexual relationship to somebody who worked at Revlon.

Q He didn't say he was going to kill him, did he, he was going to kill Allen?

A Not that I recall.

Q He didn't say he was going to bury him?

A Not that I recall.

Q He didn't say he was going to use any kind of force or violence on him, did he?

A Not that I recall.

Q I would like to ask you your best recollection now. Did you think that Mr. Stoller was drunk when he made this call?

MR. SORKIN: Objection, your Honor. I don't see what his state of mind has to do --

MR. GOULD: I think it has a great deal to do with it.

THE COURT: I am going to allow that. I can see a better way to put it. I think Mr.Gould is entitled

to his formulation here if he really wants it.

Q Was there anything in his speech which suggested to you that he was drunk?

A It did not occur to me at that time that he appeared druhk,but I have had very, very few discussions with him and it would be very difficult for me to make any judgment.

Q Have you talked on the telephone with people who were under the influence of alcohol, to your knowledge?

A Yes, and sometimes they sound drunk and sometimes they don't.

Q In this case didn't he sound drunk to you?

A To me at the time, Mr. Gould, it did not occur to me that he was drunk.

Q As you think about it now, is it possible or likely that he was drunk?

MR. SORKIN: Objection. Anything is possible.

MR. GOULD: I don't mean it in the ideological terms. I mean in his recollection. Here is a man trying to remember the conversation.

THE COURT: I will certainly allow the question.

Q Today in trying to look back on it, was there any indication,now that you think of it, of intoxication or usage of alcohol in the speaker?

A Mr.Stoller did not sound like a classic drunk.

Q Classic drunk?

A That's right.

Q Did he sound rational?

A Yes.

Q He sounded as if he was in control of all of his factulties?

A He sounded emotionally distraught. I don't know whether you call that control or not.

Q Emotionally distraught, that is your characterization?

A That's right.

MR. GOULD: Thank you, I have no more questions.

THE COURT: Mr. Sidney Feldshuh.

MR. FELDSHUH: I have no questions, your Honor.

THE COURT: Any redirect, Mr. Sorkin?

MR. SORKIN: No, your Honor.

THE COURT: Thank you, Mr.Bregman, you may be excused.

(Witness excused.)

MR. SORKIN: Your Honor, the Government calls Glen Robert Allen.

Glen Allen Direct

GLEN ROBERT ALLEN, called as a witness having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SORKIN:

MR. SORKIN: May I proceed, your Honor?

THE COURT: Yes, sir.

MR. SORKIN: Your Honor, preliminarily this testimony is only being offered against Mr.Stoller.

MR. GOULD: And to save time, if counsel wants it, I will concede that the witness is the son of Jerome Allen and Janice Allen, otherwise known as Janice Hickock, that he resided with his mother and father on March 6, 1974, and that he will testify that he knows Mr.Stoller and that on that date he received a telephone call from Mr. Stoller. I will concede those things.

Q Did you hear Mr. Gould, Mr. Allen?

A Yes, I did.

Q Please keep your voice up.

A Okay.

Q Mr. Allen, how long have you known Mr.Stoller?

A At least ten years, more likely 12, 13 years.

Q How many times have you spoken to him?

A Many times, countless times.

Q You heard Mr. Gould. You received a telephone call from Mr. Stoller. Do you recall that?

A I received several on the night he mentioned.

Q Please keep your voice up.

A I received several on the night he mentioned.

Q The date --

MR. GOULD: March 6.

Q March 6, is that your recollection of the date, Mr.Allen?

A 5 or 6, one or the other. I am not sure.

MR. SORKIN: If your Honor will just bear with me for one moment.

(Pause.)

Q What was your best recollection as to the date, Mr.Allen?

A The 6th, the 5th.

Q Tell us please what Mr. Stoller said.

A Between four and six calls, the first few calls he was asking to speak to my father. I told him that my father wasn't home and he would get off the phone.

That went on two or three times like that.

Then about the fifth call or so --

Q I can't hear you,Mr. Allen. I am sorry.

A About the fifth call or so he was getting

angry.

Q Go ahead. What did he say to you?

A He said, "It's all over now," and later in that conversation or in a conversation after that he said -- he was mumbling. He said, "You'll see him in the cemetery. It's all over."

Q How many times did he say "You'll see him in the cemetery"?

A Twice.

Q Did he ask for your father again?

A No, he more or less said that the -- what he was telling me was to be relayed to my father.

End 6A

Q Mr. Allen, how many times, approximately, the best of your recollection, did Mr. Stoller call where you would pick up the phone between February 1, 1974 and May 30, 1974 asking for your father?

A An approximation?

MR. GOULD: I object to that, your Honor. What does that got to do with it?

THE COURT: Let me see if I understand this. You dropped your voice. You want to know how many times he himself picked up the phone in response to a ring between what dates and what dates?

MR. SORKIN: Approximately February 1, 1974 and May 30, 1974.

THE COURT: I'm going to sustain an objection on the basis that I'm not sure what the objecting counsel has in mind.

However, I think it could be refurbished or re-framed to take care of the problem. I think that is a little early.

MR. SORKIN: Very well, your Honor.

Q Mr. Allen, between March 5, 1974 and today's date --

MR. GOULD: Same objection.

THE COURT: I'm going to take this and see what

happens. I think I understood your objection and you may be right, but at this stage of the proof I can't tell. I will allow it.

Q How many times, Mr. Allen, did you pick up the phone and Mr. Stoller was on the other end?

A Between March --

Q March 5, 1974 and this date.

A An approximation would be 20, 30, 25 times.

MR. GOULD: If your Honor please, I move to strike it out. That has no probative value.

He might have any number of calls.

THE COURT: I said unless something develops further I will agree with you.

MR. SORKIN: Nothing will develop further with this witness, your Honor.

THE COURT: I know. I understand that, too. In effect, Mr. Gould and Mr. Sorkin, I'm taking this subject to some additional proof which I hope will be forthcoming. Otherwise, I will strike it and so advise the jury.

MR. SORKIN: I have no further questions of this witness.

CROSS EXAMINATION

BY MR. GOULD:

Q Mr. Allen, you are, as I understand it, the son

of Mr. Jerome Allen?

A I am.

Q And you have known Phil Stoller I think you said about 12, 13 years, something like that?

A Yes.

Q And you have seen him in your own home, haven't you?

A Many times.

Q And you have been to his home?

A No, I haven't.

Q You have not.

But you do know that he and your father have had a very close relationship for many years?

A Yes.

Q Indeed, did you not address him from time to time as Uncle Phil?

A Not -- I wouldn't call him that, but perhaps I made references referring to him as Uncle Phil.

Q You had an affectionate relationship with him?

A Yes, I have known him a long time.

Q He gave you gifts, didn't he, from time to time?

A I can't think of any offhand, but probably, yes.

Q He was pretty nice to you, wasn't he,

Glen Allen Cross

always nice and pleasant to you?

A Generally, yes, certainly.

Q Now, on March 6th --

MR. SORKIN: I'm sorry, I can't hear Mr. Allen.

Q Talk up, Mr. Allen. Talk to the back of the room so everybody can hear you.

Let's get down to March 6th. March 6th the phone rings and there is Phil Stoller on the phone, right?

A Yes.

Q And he wants to talk to your father, correct?

A Correct.

Q And you tell him your father isn't home, right?

A Right.

Q And then he starts muttering, isn't that what you said before?

A Yes, sir.

Q You couldn't even understand what he was talking about, could you?

A A great deal of it was lost, yes.

Q It was incoherent, was it not?

A A great deal of it.

Q Muttering and incoherent, and from the fact that he was muttering and incoherent did you not form the judgment that he was drunk?

A Yes, I did form that judgment.

Q Very drunk?

A Yes.

Q In other words, you knew in this conversation that you were talking to a man who was very drunk?

A Yes, sir.

Q Now, Mr. Allen, you testified before the grand jury on March 11, 1974; did you not?

A Yes, I did.

Q You told the grand jury substantially what you told Mr. Sorkin in response to his questions here; isn't that right?

A Yes.

Q You didn't tell the grand jury that he was muttering and incoherent, did you?

A Well, I was never asked.

Q Before you went to the grand jury had you told Mr. Sorkin privately? Just yes or no.

A Yes, on every occasion I spoke about the particular incident --

Q Before you went into the grand jury room you had a talk with Mr. Sorkin and you told Mr. Sorkin that the man was muttering and incoherent, right?

A Yes.

Q And you didn't tell the grand jury that Stoller was very drunk when he spoke to you, did you?

A No, I did not.

Q But before you went into the grand jury room did you tell Mr. Sorkin that Mr. Stoller was drunk?

A Yes, sir.

Q What did you say? You said, "Mr. Sorkin, I should tell them that he was very drunk, shouldn't I?"

A Something along that line. I stated the fact that Phil seemed to be extremely intoxicated.

MR. SORKIN: Seemed to be?

Q "Seemed to be extremely intoxicated," are the words.

You conveyed to Mr. Sorkin before you went into the grand jury room the fact that Mr. Stoller had seemed to be extremely intoxicated, correct?

A Yes.

Q What did Mr. Sorkin say about that?

A After I stated that fact, nothing.

Q Did he not say to you, sir, before you went into the grand jury room, "Don't mention that. Don't volunteer information. Just answer the questions you are asked."

A Prior to my appearance in the grand jury he told me not to volunteer information, just answer the questions he asked.

Q And you were not asked any question about whether Mr. Stoller was drunk or not?

A No, sir, I was not.

Q Mr. Allen, let us be very specific. We have it that before you went in the grand jury room you told Sorkin that in the conversation of March 6th Stoller was extremely intoxicated, correct?

A Yes, I told Mr. Sorkin that.

Q And you were not asked any questions about it in the grand jury room?

A No, I was never asked that.

Q Indeed before you went into the grand jury room you were told not to volunteer that information, correct?

A Just to answer the questions asked of me.

Q How old are you?

A 20 years old.

Q Mr. Allen, you have been in this building a few times in the last few days, haven't you?

A I was here on Monday.

Q Did you have conversations with Mr. Sorkin in the last few days?

A On Monday I spoke to Mr. Sorkin but not at length and not pertaining to this particular subject.

Q When you had the conversation with Mr. Sorkin on Monday where did it take place, in the witness room back there?

A I spoke to Mr. Sorkin briefly in his office, I believe, on the third floor of this building.

Q In the conversation you had with him on Monday was there any mention made of marijuana or narcotic drugs?

A Yes, he told me that he had heard a rumor that the office that he represents was going to plant marijuana on me or because I testified they would get me off some marijuana conviction, something along those lines, yes.

Q That is what he told you.

Have you got charges against you?

A I have never been arrested.

Q Ever got any charges?

A I have never been in any trouble in my life.

MR. SORKIN: I can't hear the answer.

A I have never been arrested and never been in trouble.

Q You have never been charged with any violation of the narcotics laws, have you?

A No, sir.

Q What was he talking about, do you know?

A No, I don't.

Q Didn't you understand why he should mention things like that to you?

A He had said that he had heard a rumor to that

effect.

Q But you didn't know what he meant, did you?

A No, I didn't. I would like to add that he did assure me that such conduct would not occur.

Q They would not do anything?

A No.

MR. GOULD: No further questions.

THE COURT: I don't think Mr. Feldshuh needs to ask questions. The testimony was not offered as to his client.

MR. SORKIN: That is true. I have no further questions, your Honor.

THE COURT: Thank you, Mr. Allen, you may be excused.

(Witness excused.)

MR. SORKIN: The Government calls Janice Allen.

J A N I C E A L L E N, called as a witness by the Government, being first duly sworn, testified as follows:

MR. SORKIN: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. SORKIN:

Q Mrs. Allen, please keep your voice up. Talk

to the back of the room.

Mrs. Allen, were you at one time married to Jerome Allen?

A Yes.

Q For how long?

MR. GOULD: I am prepared to make the same concessions that I made with respect to the previous witness. She is Janice Allen also known as Janice Hickock. She was married to Jerome Allen, they were divorced. However, they are now reconciled and living together and in the early part of March 1974 she received telephone calls from Philip Stoller who was well known to her over a period of many years.

MR. FELDSHUH: I take it, Mr. Sorkin, you are not offering this as against the Defendant Frank?

MR. SORKIN: That is incorrect. This is being offered as against Mr. Frank and Mr. Stoller and while I appreciate Mr. Gould's stipulation I think there is more to the testimony.

THE COURT: Go ahead.

Q Mrs. Allen, you have a son, Glen Allen, is that correct?

A Yes.

Q Let me show you, Mrs. Allen -- by the way, where

were you on March 4, 1969?

A I believe I was in Florida.

Q I cannot hear you.

A In Florida.

Q In Florida?

A Or in New York. At that time I was living between both places.

Q Did you have a home in Florida?

A Yes, an apartment.

Q Let me show you now what has previously been marked as Government's Exhibit 43 for identification. I ask you to look at that and would you tell me please what it is? Just what is that document? Don't read from it.

A It's a document --

THE COURT: Mrs. Allen, I am sitting four feet from you and I can't hear a word you are saying.

A It's a document with my married name and my maiden name on it.

Q Is that your signature?

A Yes.

Q Can you tell this Court and jury where you were on the date of March 4th having looked at this document?

A I believe I was in Florida at that particular

time. That was either in Florida or in New York. It was either signed in Florida or New York. I signed a number of papers all my life.

MR. SORKIN: We offer Government's Exhibit 43 in evidence at this time.

Counsel also have a copy of this, your Honor.

MR. GOULD: May I ask a few questions about the document, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. GOULD:

Q There is no question this is your signature; is it?

A No.

Q On this paper?

A No.

Q How do you know where you were on March 4th?

A I received it in New York or in Florida.

Q You might have been in New York?

A It was one place or the other. I have signed papers in Florida and I have signed papers in New York.

Q Mrs. Allen, you don't recall know whether you were in New York or you were in Florida, isn't that right?

A It could have been either place.

Q It could have been either place.

MR. GOULD: I think counsel better explain what he is offering this for.

BY MR. SORKIN:

Q When was your anniversary --

MR. GOULD: Your Honor, I am making an objection to the document on the voir dire questions.

THE COURT: May I see it? You all have seen it and I have not.

You object too, Mr. Feldshuh?

MR. FELDSHUH: Yes, sir, I stand upon the same objection, your Honor.

THE COURT: It seems to me to be relevant, gentlemen, therefore I am not at all sure what your objection is about.

MR. GOULD: Counsel would have to explain to your Honor probably at the side bar what he is offering it for. You see, the document itself is innocuous. I wouldn't care about the document.

THE COURT: Agreed.

MR. GOULD: It is the date. I think Mr. Sorkin owes it to the Court to come up and explain, out of the hearing of the jury, what he is offering it for and your Honor will understand our objection.

MR. SORKIN: I will withdraw my offer at this time and ask further questions of Mrs. Allen.

THE COURT: All right.

BY MR. SORKIN:

Q Could you tell us please, did you prepare this affidavit or document?

A I signed it.

Q Did you prepare it?

A What do you mean by prepare?

Q Did you type out the words on here?

A No.

Q Do you know who did?

A I assume somebody --

Q Don't assume.

Did you do it?

A No, I didn't.

Q Did someone give you this to sign?

A Yes.

Q Who gave it to you?

A Jerry, he was my husband at the time.

Q Jerry, your husband, gave it to you to sign?

A Yes.

Q When was your anniversary?

A My anniversay is March 5.

Q Where did you spend your anniversary?

A Sometimes in Florida and sometimes in New York and sometimes in Europe.

Q Where did your husband give you this document, do you recall?

MR. FELDSHUH: It may have been New York and Florida.

Q Do you recall where he gave you this document?

A I feel the answer I gave before is the most accurate one I can give.

Q Either Florida or New York?

A Yes.

Q Did he give you this document at Mr.Frank's office?

A It could have been although sometimes I have signed papers at home but it could have been Mr.Frank's

office.

MR. GOULD: I move to strike that out.

MR. SORKIN: I can't hear so I don't know what they are moving to strike.

THE COURT: Yes, I will strike it. I think, again, would you help her by asking a more precise question even if it is leading a bit.

MR. SORKIN: Yes.

Q Mrs. Allen, when you signed your name here do you recall if Mr. Frank was present or not?

A There are lots of papers that I have signed.

Q This document.

THE COURT: If you don't remember --

THE WITNESS: That particular document, I don't remember.

THE COURT: Just a minute, gentlemen.

If you don't remember just tell us that you don't remember.

THE WITNESS: I don't remember.

THE COURT: All right.

Q Mrs. Allen, when you were in Florida did your husband give you over your dinette table certain papers to sign?

MR. GOULD: I object to this.

THE COURT: Sustained as to this one at least. She has been in Florida many times, Mr. Sorkin.

Q In March of 1969.

THE COURT: First of all, we have to establish that she was there and then I think the form could be straightened out a little better in some other respects.

Q Were you in Florida at any time in March of 1969?

A Yes.

Q Did your husband while in Florida give you certain documents to sign?

A Yes.

Q Was this one of the documents?

A I really don't know.

Q Let me show you what has previously been marked as Government Exhibit 2G in evidence. I show you a stock certificate. Is that your signature?

A Yes, I believe that is.

Q I can't hear you.

A Yes, I believe that is.

Q It is?

A Yes.

Q Let me show you now what has previously been marked as Government Exhibit 24 in evidence, and I ask you now is that your signature?

A No. I don't think it is mine.

Q That is not your signature?

A No.

Q On here is Mr. MartinFrank's name and a notary stamp.

MR. FELDSHUH: It is what appears to be that.

MR. GOULD: May I see what it is?

MR. SORKIN: Sure.

MR. GOULD: All right.

THE COURT: Go ahead.

MR. FELDSHUH: I object to the form of your question.

Q Mrs. Allen, do you know who signed this?

A No.

Q Let me direct your attention, Mrs. Allen, to approximately March 5 of 1974.

MR. SORKIN: Your Honor, preliminarily, this evidence is coming in only as against Mr. Stoller.

Q How long have you known Mr.Stoller?

A About ten years.

Q Did there come a time whenMr. Stoller called you at your home?

A He called many times.

Q Let me direct your attention to March 6, 1974.

A Yes.

Q Did you have a conversation with him over the telephone?

A Yes.

Q Tell us, please, Mrs. Allen, what you said to him and what he said to you and please try to keep your voice up.

A I said, "Yello, Phil," I recognized the voice, and he asked where Jerry was, and I said, "Jerry isn't home," and then he said that , "Well, I have a message for Jerry." And he said, "Tell Jerry that he will need four strong men, two on each side and he better look in back of him."

Q I didn't hear you.

THE COURT: Mrs. Allen, I am trying to get as close to you as I can and at noontime at least my hearing was tiptop, but I didn't hear anything now.

Start over again. All these people, don't let any of us make you nervous, it is understandable you might be a little nervous. Please don't be. We make noise and all of that, but we are not really that formidable. You talk to the back of the room and tell the jury as loudly as you can what you remember that Mr.Stoller said and you said.

A I picked up the phone and I recognized Phil's

voice and I said, "Hello, Phil," and he said, "Is Jerry there," and I said, "No."

He said, "Well, I have a message for Jerry." He said, "I have a message for Jerry." He said, "Tell him he will need four strong men, two on either side, and he better look behind him," and I said something like "Phil, what kind of talk is that?" Or something to that effect. He said, "Just give Jerry my message," and that was it.

Q How many times did he call on that particular date?

A Actually about I guess, three, four, five times that day. After a while I stopped picking up the phone. I just didn't pick up the phone afterwards.

Q Mrs. Allen, did there come a time when you had a conversation with Mr.Stoller on March 10th?

A Yes.

Q Did he call you or you called him?

A He called.

THE COURT: I didn't hear you.

THE WITNESS: He called my apartment.

THE COURT: All right.

A I said "Phil, I don't think we should be talking and I don't think your lawyer would approve of it and I don't think--"

MR. GOULD: I can 't hear you.

THE WITNESS: I said to Phil, "I don't think that we should be talking and I don't think your lawyer would like it, and there is so much trouble, please don't call," and he said, "Trouble, you don't know what trouble is," and he laughed in such a funny way that I hung up the phone.

MR. SORKIN: I have no further questions of this witness.

CROSS-EXAMINATION

BY MR. GOULD:

Q He laughed you say?

A He said, "You don't know what trouble is," and he laughed.

Q He laughed in a funny way you told us.

A Yes.

Q Did you think he was drunk?

A Probably, he usually is.

Q In this period of time he was drunk a good deal, wasn't he, when you talked to him?

A Even other than this period of time really.

Q You mean he drinks?

A Yes.

Q We are interested especially, Mrs. Allen, in

March of 1974, this last year, and this conversation you have told us about. Did you get the impression that he had been drinking?

A I had that impression plus the fact that he was rather firm, but I do believe that he was drinking, yes.

Q You think that. That is your judgment?

A Yes.

Q You had seen him a number of times when he had been drinking, right?

A Yes.

Q And he sounded as he had on those occasions when you knew he had been drinking, correct?

A That and a little stronger than usual. I wasn't used to Phil saying things like that.

MR. SORKIN: I am sorry, I can't hear her.

Q You remember testifying in this case before the grand jury, do you not?

A Yes, I do.

Q Mrs. Allen, I am going to stand back here and make it easier for you to keep your voice up. I don't mean to shout at you, but we all want to hear you.

Before you went to the grand jury you had at least one conversation with Mr. Sorkin, didn't you?

A Pardon?

Q You didn't hear me this time?

A No.

Q Before you went in to the grand jury, which was on March 11th,and you assume that day, 1974, you talked to Mr. Sorkin, didn't you?

A I saw him in the anteroom.

Q You had seen him before, hadn't you?

A I had spoken with him on the phone. I don't think I actually had seen him before that. I don't recall seeing him before that.

Q When you saw him in the anteroom,-when you saw him in the anteroom,on the day that you testified,you told him, did you not, that Mr. Stoller had been drinking when he made that call?

A We were just generally talking and Phil's condition of drinking I am sure came up.

Q You are sure that the subject came up that Phil had been drinking at the time of that call on March 6th, isn't that right?

A Would you repeat the question?

Q I will withdraw it and ask you in a different way that may be simpler.

You turn in your mind to that scene in the anteroom outside the grand jury room, you got it in your

mind?

A Yes.

Q And you are ready to go into the grand jury room, correct?

A Yes.

Q And Mr. Sorkin is outside with you?

A Yes.

Q Outside the grand jury room?

A Yes.

Q How about Doonan, was he there too that day, you know Mr.Doonan over here, this handsome young man?

A Yes.

Q Was he there that day too?

A I don't know. I think hemight have been. He usually is.

Q He usually is. Mr. Sorkin and you were standing outside the grand jury room and you are talking in a general way about what your testimony is going to be, correct?

A Yes.

Q And he went over with you what Stoller had said to you on the telephone on March 6, isn't that what happened?

A He asked me and I told him.

End 7B

Q That's right. And in the course of that conversation you said to him, you know, Mr. Sorkin -- I am giving you the substance of it, not your exact words -- you know, Mr. Sorkin, Phil Stoller, Phil Stoller drinks--

MR. SORKIN: Are you reading from a document, Mr.Gould?

MR. GOULD: Mr. Sorkin,don't you ask me questions.

MR. SORKIN: I thought it was the grand jury testimony.

MR. GOULD: You know better than that. There is no way that could be the grand jury --

THE COURT: Gentlemen, gentlemen, please. Let us go back to the --

MR. GOULD: The sincerity of the interruption is attested by counsel saying "I thought it was the grand jury testimony."

MR. SORKIN: I don't know what he has got there, your Honor.

MR. GOULD: You are not going to know.

THE COURT: Wait just a moment. We will take 15 seconds to think of you both as kindly as we ought and then you resume with your question.

Go ahead.

Q Now, Mrs.Allen, you go over your testimony with my friend Mr. Sorkin here and then you say to him in words or in substance: You know, Mr. Sorkin, Mr. Stoller drinks.

A I don't know if it was that specific time, but there was a time I alluded to Mr. Stoller's drinking.

MR. GOULD: Would you mark this for identification.

xxx (Defendant Stoller Exhibit N was marked for identification.)

Q Mrs.Allen, I assure you I don't mean to intimidate you. If my voice is up, it is purely so that the people at the back of the jury as well as his Honor can hear us both. That is your signature, is it not, on there?

A Yes.

Q And you signed this paper, did you not?

A Yes, I did.

Q And didn't you say, that on the day I testified before the grand jury I told Mr. Sorkin, the Assistant United States Attorney, that Mr.Stoller drank?

A I alluded to it, yes.

Q That's right.

A You make it sound as if I was on the edge --

Q No, Madam. And then after you told him that,

didn't you tell him that you think Stoller was drunk on March 6th when he called you?

A I said he might have been.

Q You said you think he might have been drunk when he called you. Then you went into the grand jury and you testified about the conversation, did you not?

A Yes.

Q But you didn't tell the grand jury that you thought Mr. Stoller was drunk when he made that call to you?

A No one asked.

Q Didn't you volunteer it?

A I am supposed to answer whatever questions you or Mr. Sorkin ask.

Q I wasn't there, Madam.

A Imean, I just assumed --

Q Did not Mr. Sorkin tell you before you went into the grand jury that you should not volunteer anything? Didn't he say to you, just answer the questions?

A He said to me just answer the questions, but --

Q And he didn't ask you whether you thought Mr. --

MR. SORKIN: I don't think she was through with her answer.

MR. GOULD: Don't interrupt.

MR. SORKIN: I am sorry. She said "but," and I

don't think she was through with her answer.

A He did not --

Q Just a moment. We will start over again.

THE COURT: Just a minute. Mr. Allen, have you anything else --

THE WITNESS: I did have a "but."

THE COURT: All right. What is your but?

THE WITNESS: My but was he did not say don't volunteer. He just said say the truth and answer only the questions.

Q Just answer the questions?

A That's right.

Q That is all he said?

A Yes.

MR. SORKIN: And tell the truth.

THE WITNESS: And tell the truth.

Q He said to you tell the truth?

A Yes.

Q Part of the truth was that you knew Mr. Stoller was drunk when he called you, wasn't it?

MR. SORKIN: Objection.

MR. GOULD: Now, if your Honor please, that is perfectly proper in view of the shocking remark made by him in the course of his cross-examination.

MR. SORKIN: She said she might have been, your Honor.

THE COURT: Mr. Sorkin, it isn't the role of counsel or the Judge to reconstruct testimony. The jury will accept that, as I have said many times. I will ask you to say if you wish to object to Mr. Gould's or anyone else's questions, object. Usually I understand even before you object, by the way, but passing that there is a more important reason. Then if I don't understand, it is my obligation to enlighten you to that effect. Your comments will not receive any weight whatsoever.

Go ahead, cross-examining counsel, Mr. Gould, as you were.

MR. GOULD: Thank you, your Honor.

Q Mrs. Allen, we are very sure, are we not, that before you went into the grand jury room, you did remark to Mr. Sorkin that Stoller drinks and that you thought he was drunk on the day he made the call, that is clear, isn't it?

A Yes.

Q Then Mr.Stoller said to you --

MR. SORKIN: Sorkin.

Q Mr. Sork-n said to you, just answer the questions, right?

A That's what he said when he went in, not necessarily in the order you say it.

Q But just answer the questions. And he never asked you any questions about whether Mr.Stoller was drunk or not, did he?

A No.

Q I see. Mr. Stoller has been in your home a number of times, has he not?

A Yes.

Q A number of times since March 6?

A Twice that I know of.

Q By the way, when you got that telephone call on March 6 you didn't call the police, did you?

A No.

Q You didn't call anybody, did you?

A No, I told my ex-husband --

Q You told Jerry?

A Yes.

Q When he came in?

A Yes.

Q Youtold Jerry that Phil called and he was stewed or drunk or something like that?

A I told Phil -- I told Jerry Phil made a nuisance of himself, he was rather arrogant and belligerent and a

bully on the telephone and frightening to a degree, and I wouldn 't have it.

Q And you also told Jerry you thought he was drunk?

A I don't know if I told Jerry that or not. It would be assumed. It is usually his chronic condition.

Q That was his chronic condition.

MR. GOULD: I have nothing further.

THE COURT: Do you want to ask any questions, sir?

MR. FELDSHUH: Yes, sir.

THE COURT: Very good.

CROSS-EXAMINATION

BY MR. FELDSHUH:

Q Mrs. Allen, in 1969 you were married to Jerry, were you not, your husband?

A Yes, for 25 years.

Q Did you ever give Jerry a power of attorney?

A I imagine, yes.

Q You did?

A Yes.

Q Was that power of attorney in existence in 1969?

A Yes.

Q In connection with that power of attorney, you knew that Jerry was signing your name to certain papers?

A I knew that he had the power to.

Q Speak up.

A I knew he had the power to. I didn't always know what was signed.

Q You gave him that power?

A Yes.

Q Do I understand by giving him that power he had the authority to sign your name?

A I don't think any wife fully understands.

Q You don't understand my question?

A I don't think any wife fully understands how strong a power of attorney is. It is quite strong. I guess he was signing my name.

Q You guess that?

A Yes.

Q That that was what was going to happen when you gave him the power of attorney, is that right?

A I guess that is what a power of attorney means.

End 8A

Q Is that what you understand it to mean back in 1969?

A Not fully.

Q You didn't object to Jerry signing your name to a piece of paper, did you, in connection with securities transactions?

A I don't know when he did.

MR. SORKIN: I didn't hear the answer.

A I don't know when or where he did.

Q I'm now addressing your attention to 1969. In those days you were not divorced, you were still married, still living together with your husband, is that right?

A Yes.

Q And he had a power of attorney as you now have stated?

A Yes.

Q Right?

A Yes.

Q It is correct, is it not, that you knew that he was signing your name to certain pieces of paper?

A Yes. Well, I didn't know the specific --

Q You didn't know the specific paper --

A I didn't know the full extent of powers of

attorney.

Q You understood when you signed the power that you were giving him permission to sign your name to certain pieces of paper?

A I assume that is what it was.

Q Looking at Government's Exhibit 24 in evidence, do you recognize the handwriting on that paper?

A No, it is not mine.

Q It is not yours.

Do you recognize whose it is?

A I assume--I don't know. I don't know for certain.

Q You don't recognize that as being Jerry's writing?

A It could be.

Q It could be?

A It could be.

MR. FELDSHUH: No further questions.

REDIRECT EXAMINATION

BY MR. SORKIN:

Q You are not sure, are you, as to Government's Exhibit 24, Mrs. Allen? It could be somebody else's, too?

MR. FELDSHUH: Objection, your Honor.

THE COURT: It could be somebody else's, I don't follow that. Rephrase it.

Q You said this could be Jerry Allen's signature,

forgery of your signature?

MR. FELDSHUH: Objection, your Honor.

THE COURT: Yes, sustained.

MR. SORKIN: I will rephrase it.

THE COURT: Forgery is a word of art which has no bearing here.

Rephrase it.

A It could be Jerry's --

THE COURT: Just a moment. The lawyer is asking you an improper question. He has got to rephrase it.

Q The last question you were asked by Mr. Feldshuh, could this be Mr. Allen's signature, your husband's?

A Yes, it could be.

Q But you are not sure?

MR. FELDSHUH: Objection, your Honor. She said it could be.

A It could be, but I can't vouch one 100 per cent because I didn't see him do it.

Q One last question.

When Mr. Stoller called you --

THE COURT: Gentlemen, you are both together like Siamese twins here. It is very hard for the jury and me to know who is doing what. Let's get back to it.

What is your question, Mr. Sorkin?

Q Do you recall Mr. Feldshuh asking you, Mrs. Allen, whether you called the police after --

MR. GOULD: I asked her.

Q Mr. Gould asked you whether you called the police after Mr. Stoller called. Do you recall that?

A Yes.

Q Did you call Mr. Doonan and tell him you received calls from Mr. Stoller?

A I spoke with Mr. Doonan and told him I had received calls.

Q Right after Mr. Stoller called?

A No, not immediately.

Q How soon after?

A When Jerry came home.

Q How many minutes?

A I don't know. A couple of hours, I guess.

Q You called Mr. Doonan and told him?

A Jerry called Mr. Doonan and I spoke with Mr. Doonan.

Q On the phone?

A Yes.

MR. SORKIN: No further questions, your Honor.

MR. GOULD: I renew the motion to strike the testimony of Glen Allen that there were 20 or 30 telephone

conversations from March 4, 1974 until today --

THE COURT: We will take this up in a minute.

Thank you very much, Mrs. Allen. You may be excused.

(Witness excused.)

THE COURT: Mrs. DeBartello and ladies and gentlemen, in view of the hour, we will suspend tonight. Remember, tomorrow is Friday. We will not sit tomorrow. We will resume on Monday. On Monday morning I have a case very early in the morning, but I expect to finish it I hope by 10:30. It is not a very long case. Therefore, we will resume at 10:30 rather than the usual 10:00 o'clock. Therefore, keep that in mind so that you can have a little more time to get here on next Monday morning, and I hope you enjoy a pleasant three-day weekend.

See you next Monday.

Counsel please remain.

(Jury leaves courtroom.)

THE COURT: Mr. Gould, I'm sorry. I couldn't hear those words of wisdom that you just --

MR. GOULD: What I said was, I renewed the motion to strike out that portion of the Glen Allen testimony that Stoller called him 20, 30 times between March 4, 1974 and August '74. You remember, your Honor --

THE COURT: I agree. I hear you now. Let me ask you, Mr. Sorkin, are we going to have any other testimony about Counts 2 and 3 of what I will call somewhat loosely the obstruction indictment?

MR. SORKIN: Yes, you will, your Honor.

THE COURT: Will we have anything that makes this line of testimony which Mr. Gould is attacking come into focus?

MR. SORKIN: Your Honor, we will if the Government decides to call Jerome Allen. If we do not call Jerome Allen, your Honor, at that time we will have no objection to striking it, the 20 to 30 --

THE COURT: I wish you would keep Mr. Gould and me apprised. I would agree with Mr. Gould so far. I expressly hold that open to you as I promised. If you decide not to, let us know.

MR. SORKIN: I certainly will, your Honor.

MR. GOULD: Can I just raise one question?

If they are going to call Jerome Allen, it would seem to me that in order to conserve everybody's time we ought to know about it promptly.

THE COURT: I would agree.

MR. GOULD: With an appropriate 3500 treatment of it, not the kind of dribs and drabs --

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MR. SORKIN: That's unfair, Judge. We have given --

THE COURT: We are not going to argue about 3500 material.

MR. GOULD: If we are going to get Allen, we ought to get it.

THE COURT: Listen to me. This is a serious point buried in this badinage between you two, and that is this: If Jerome Allen is going to appear as a witness, I want to be advised as far in advance as possible. Then when I'm advised, believe me, Messrs. Gould and Feldshuh and company will know as quickly thereafter as I can get word to them myself if I have to.

There are reasons for this which affect the Court, matters not having directly to do with this case. What I have in mind there is, I have been advised, Mr. Sorkin, that -- what is the name of that lawyer?

MR. SORKIN: Turchin.

THE COURT: He has agreed apparently to represent this man Allen. So I hope that you have had no news to the contrary.

MR. SORKIN: I haven't spoken to Mr. Turchin, your Honor.

THE COURT: All right.

Is there any other weighty business that we

ought to take up?

MR. GOULD: Not from me.

MR. FELDSHUH: Not from me.

(Adjourned to September 23, 1974 at 10:30 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Ramon N. D'Onofrio (Resumed)			1032	1054
Marilyn Herzfeld	1072	1089	1145	
Eric Bregman	1149	1174		
Glen Robert Allen	1186	1190		
Janice Allen	1197	1209	1222	

EXHIBIT INDEX

Government	Identification	In Evidence
20		1072
42A		1167
Defendant Stoller		
M	1101	1107
N	1214	
Defendant Frank		
H	1115	1116
I	1121	1122
J	1123	1125